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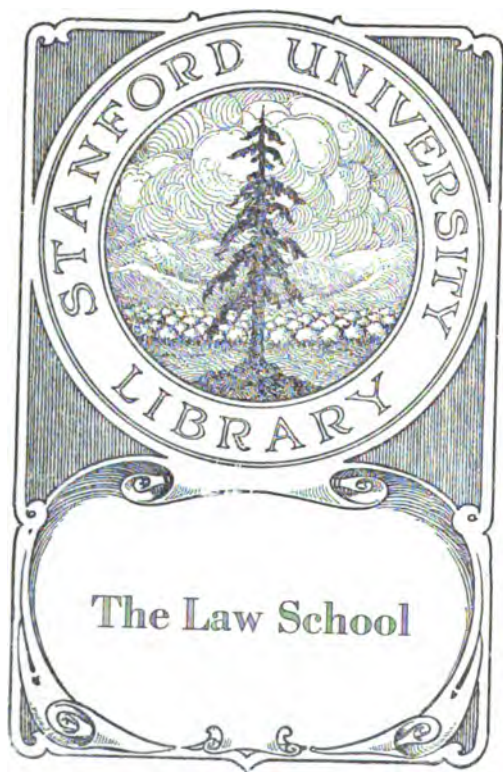
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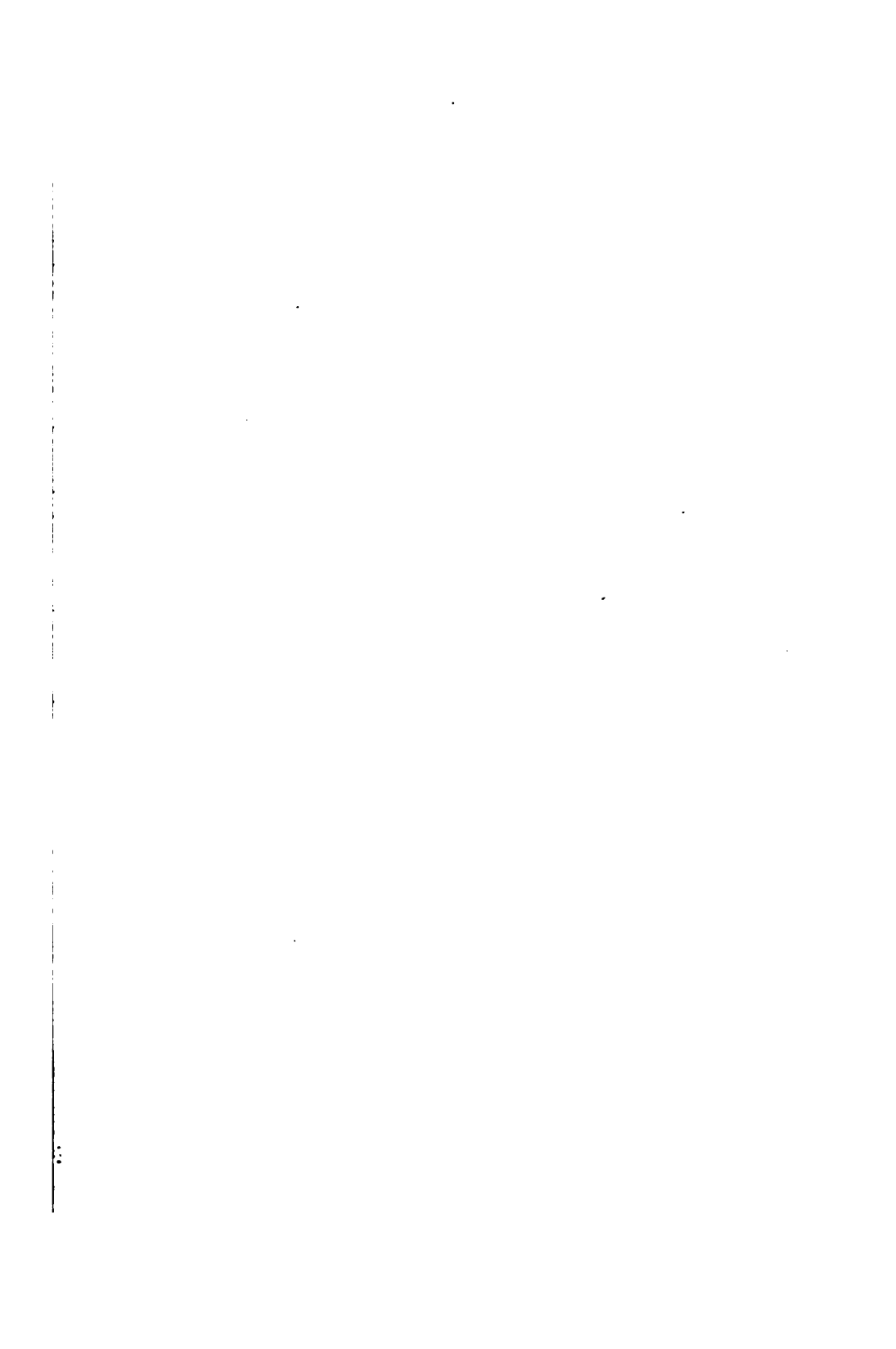
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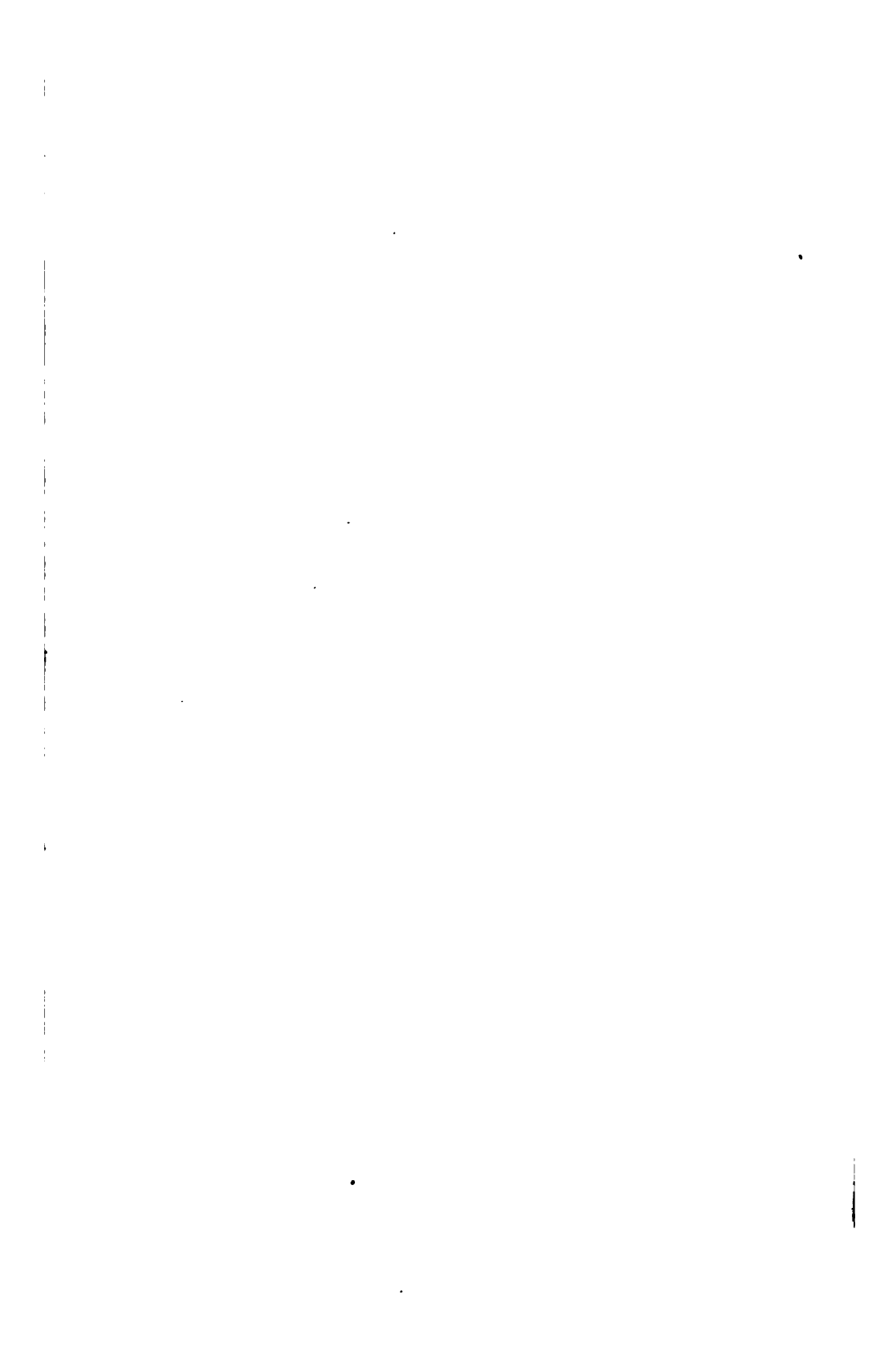


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THE *C*
ACTS AND RULES

RELATING TO
INSOLVENCY;

BY
THE HON. GEORGE R. HARDING,
ONE OF THE JUSTICES OF THE SUPREME COURT OF QUEENSLAND

AND
THE HON. P. MACPHERSON, M.L.C.,
ONE OF THE SOLICITORS OF THAT COURT.

Brisbane:
WATSON, FERGUSON & COMPANY, QUEEN STREET.

1887.

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TO

The Honorable Sir Charles Gilley, Knight,

The Chief Justice of Queensland,

THIS BOOK IS DEDICATED.

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ADVERTISEMENT.

THIS book, so far as it is the work of Mr. JUSTICE HARDING, is a reprint of that part of his collection of "The Acts and Orders of the Supreme Court, with Notes," which relate to insolvency, revised and brought down to the first of January, 1887. The introduction and index are the work of Mr. MACPHERSON, and are based on his previous compilation on the same subject, now out of print.

CONTENTS.

	PAGE.
TABLE OF CASES	ix
ANALYSIS OF <i>Insolvency Act of 1874</i> AND RULES ...	xi
ANALYSIS OF ENGLISH STATUTE AND RULES	xxv
INTRODUCTION	xxxvii
ACT... ..	1
PART I.— <i>Preliminary</i> , Sections 2 to 7	2-6
PART II.— <i>Constitution and Powers of Court and Prac- tice</i> , Sections 8 to 39	6-17
PART III.— <i>Debtors' Petitions</i> , Sections 40 to 43 ...	17-19
PART IV.— <i>Creditors' Petitions</i> , Sections 44 to 73 ...	19-38
PART V.— <i>Consequence of Adjudication, Custody and Vesting of Property</i> , Sections 74 to 121 ...	38-73
PART VI.— <i>Administration of Property</i> , Sections 122 to 163	73-99
PART VII.— <i>Close of Insolvency and Certificate</i> , Sec- tions 164 to 176	99-113
PART VIII.— <i>Supplemental Provisions</i> , Sections 177 to 201	113-127
PART IX.— <i>Liquidation by arrangement</i> , Sections 202 and 203	127-135
PART X.— <i>Composition with Creditors</i> , Sections 204 and 205	135-140
PART XI.— <i>Offences</i> , Sections 206 to 221	140-149
PART XII.— <i>Abolition of Offices, Disposal of Records, &c.</i> , Sections 222 to 225	150-151
THE INSOLVENCY ACT AMENDMENT ACT OF 1876 ...	152
GENERAL RULES OF 1ST OCTOBER, 1874	154

SCHEDULE OF FORMS	...	...	...	...	...	217
SCALE OF COSTS	...	...	...	...	...	271
SCALE OF FEES	...	...	...	...	...	275
GENERAL RULES OF 5TH SEPTEMBER, 1876, AND SUBSE- QUENT DATES	...	...	...	...	...	277
APPENDIX, CONTAINING SECTIONS OF FOLLOWING ACTS—						
<i>Common Law Practice Act of 1867</i>	...	...	...	...	...	285
<i>Constitution Act of 1867</i>	...	...	...	...	...	289
<i>Defamation Act</i>	...	...	...	...	...	281
<i>Divisional Boards Act of 1879</i>	...	...	...	...	...	294
<i>Electric Telegraph Messages Act of 1872</i>	...	...	...	...	...	289
<i>Equity Act of 1867</i>	...	...	...	...	...	286
<i>Gold Fields Act of 1874</i>	...	...	...	...	...	292
<i>Joinder and Reviver Act</i>	...	...	...	...	...	285
<i>Legislative Assembly Act of 1867</i>	...	...	...	...	...	287
<i>Licensing Act of 1885</i>	...	...	...	...	...	294
<i>Life Insurance Act of 1879</i>	...	...	...	...	...	293
<i>Local Government Act of 1878</i>	...	...	...	...	...	292
<i>Mercantile Act of 1867</i>	...	...	...	...	...	287
<i>Real Property Act of 1861</i>	...	...	...	...	...	284
<i>Real Property Act of 1877</i>	...	...	...	...	...	292
<i>Shipping Act (Colonial)</i>	...	...	...	...	...	281
<i>Supreme Court Act of 1874</i>	...	...	...	...	...	291
<i>Unclaimed Balances Act</i>	...	...	...	...	...	282

TABLE OF CASES.

- | | |
|---|---|
| <p> Allen and Jones, <i>Re</i>, 44.
 Andrews, <i>Re</i> J. H., 105.
 Balfour, <i>Re</i> C. A., 56.
 Barker, <i>Re</i>, 126.
 Bell, <i>Re</i> A. W. L., 94.
 Benjamin, <i>Re</i> P., 44.
 Bennett, <i>Re</i> J. W., 106.
 Bennett, <i>Re</i> H., 102, 103.
 Blakeney, <i>Re</i> C. J., 105.
 Bradshaw Barker, <i>Re</i>, 102.
 Branch, <i>Re</i>, 100.
 Bromberg, <i>Re</i> S., 32, 45.
 Burns, <i>Ex parte</i> J. H., 41, 200.
 Campbell, <i>Re</i> A., 102, 103.
 Chetwynd, <i>Re</i> A. J., 68.
 Chick, <i>Re</i> A., 238.
 Clune, <i>Re</i> J., 106.
 Corry, <i>Re</i> F., 99.
 Crank and Co., <i>Re</i> H. A., 102, 103.
 Crosby, <i>Re</i>, 72.
 Cross, <i>Re</i>, 34.
 Cutmore <i>v.</i> Ash, 39.
 Daunt, <i>Re</i> E. R., 107, 108.
 Davis <i>v.</i> Maclean, <i>Re</i> Maclean, 61.
 Devine, <i>Re</i> W., 60, 62.
 Dickins, <i>Re</i>, 40.
 Donaldson, <i>Re</i> J., 65.
 Douglas, <i>Re</i>, 19.
 Droughton, <i>Re</i> C., 85.
 Dunn, <i>Re</i>, 105.
 Durant, <i>Re</i>, 105.
 Friend, <i>Re</i>, 19.
 Field and de Gruchy, <i>Re</i>, 56.
 Good, <i>Re</i> W. A., 144.
 Gordon, <i>Re</i> C. J., 107.
 Graham, <i>Re</i> P. and J., 77.
 Gralton, <i>Re</i> H., 56.
 Gray and Co., <i>Re</i>, 77, 134.
 Greenslade, <i>Re</i> G. J., 117.
 Harden, <i>Re</i> G., 105.
 Harris, <i>Re</i> J. and G., 70, 103.
 Harrison, <i>Re</i> P. M., 42.
 Harrison, <i>Re</i>, 106.
 Haupt, <i>Re</i> C., 8, 66.
 Howie, <i>Re</i>, 40.
 Hughes and Co., <i>Re</i>, 55, 133, 134, 135.
 Hurford, <i>Re</i>, 101. </p> | <p> <i>Insolvency Act, Re The</i>, 47, 164, 174.
 Jones, <i>Re</i> T., 105.
 Josephson, <i>Re</i>, 40, 107.
 King and Redmond, <i>Re</i>, 148.
 Kirwan, <i>Re</i>, 52.
 Kittson, <i>Re</i>, 100.
 Long, <i>Re</i> J., 119.
 Maclean, <i>Re</i>, Davis <i>v.</i> Maclean, 61.
 Macpherson, <i>Re</i> J., 77.
 McGhie, Luya and Co. <i>v.</i> Gillis, 28.
 Medhurst, <i>Re</i>, 148.
 Messon, <i>Re</i> A., 105.
 Nash, <i>Re</i> G., 126.
 Normanby Copper Mining Company
 <i>v.</i> Corfield, 64.
 Pattison and Co., <i>Re</i>, 144.
 Payne <i>v.</i> Trustee of Conroy, 11, 41.
 Pengelley, <i>Re</i> J. H., 130.
 Perkins, <i>Re</i> W. T., 105, 107.
 Phillips, <i>Re</i> J., 107.
 Quinn, <i>Re</i> Thos., 105.
 Rawlins, <i>Re</i> F., 61.
 Regina <i>v.</i> Hicks, 132.
 Regina <i>v.</i> King, 19, 34, 71.
 Regina <i>v.</i> Piermont, 144.
 Rook, <i>Re</i> E. H., 169.
 Ross, <i>Re</i> A., 117, 207, 264.
 Severin, <i>Re</i> L., 106, 126.
 Shea, <i>Re</i> W., 105.
 Sheehy, <i>Re</i>, 149.
 Sherry, <i>Re</i> C. M., 105.
 Snowden, <i>Re</i>, 40.
 Sparks, <i>Re</i>, 25.
 Todd, <i>Re</i> A., 64.
 Tooth, <i>Re</i> A., 105.
 Tye, <i>Re, Ex parte</i> Miles, 65, 66, 89.
 Wildash and Kenneth Hutchinson,
 <i>Re</i>, 64.
 Wileman, <i>Re</i>, 144.
 Wilson, <i>Re</i> C., 75, 75.
 Wilson, <i>Re</i> G., 100.
 Wilson, <i>Re</i> R. W., 45, 56.
 Wood, <i>Re</i> T., 56.
 Woods, <i>Re</i> M., 117.
 Wormwell, <i>Re</i> P., 107.
 Yates, <i>Re</i> J., 107. </p> |
|---|---|

TABULAR ANALYSIS OF INSOLVENCY ACT OF 1874,

*With References to the corresponding English Statutes and Orders
printed in the text.*

Sections of Act.			Corresponding Sections of English Statute or Rules.	Page.
38 Vic. No. 5 s.	4	...	32 and 33 Vic. c. 71 s. 4, 16 (5)	2-4
" "	5	...	" " " 125 (14)	5
" "	6	...	" " " " " " "	5
" "	7	...	" " " " " " "	5
" "	8	...	" " " " " " "	6
" "	9	...	" " " " " " "	6
" "	10	...	32 and 33 Vic. c. 71 s. 65	7
" "	11	...	" " " " " 65	7
" "	12	...	" " " " " " "	8
" "	13	...	" " " " " " "	8
" "	14	...	32 and 33 Vic. c. 71 s. 71	8
" "	15	...	" " " " " 71	8
" "	16	...	" " " " " 71	9
" "	17	...	" " " " " " "	9
" "	18	...	" " " " " " "	9
" "	19	...	" " " " " " "	10
" "	20	...	E. R. 49	10
" "	21	...	E. R. 1870, r. 186	10
" "	22	...	32 and 33 Vic. c. 71 s. 72	10
" "	23	...	" " " " " 72	11
" "	24	...	" " " " " " "	11
" "	25	...	32 and 33 Vic. c. 71 s. 74	12
" "	26	...	" " " " " 77	13
" "	27	...	" " " " " 78	13
" "	28	...	" " " " " 78	13
" "	29	...	" " " " " 78	14
" "	30	...	" " " " " 5	14
" "	31	...	" " " " " " "	15
" "	32	...	" " " " " " "	15
" "	33	...	" " " " " " "	15
" "	34	...	" " " " " " "	15
" "	35	...	" " " " " " "	15
" "	36	...	" " " " " " "	16
" "	37	...	" " " " " " "	16
" "	38	...	" " " " " " "	16
" "	39	...	" " " " " " "	17
" "	40	...	" " " " " " "	17
" "	41	...	" " " " " " "	17
" "	42	...	" " " " " " "	18
" "	43	...	" " " " " " "	18
" "	44	(1) ...	32 and 33 Vic. c. 71 s. 6 (1) ...	19
" "		(2) ...	" " " " " (2) ...	19

Sections of Act.			Corresponding Sections of English Statute or Rules.			Page.
38 Vic. No. 5 s.	44	(3) ...	32 and 33 Vic. c. 71 s.	6	(3) ...	19
" "		(4) ...	" "	"	(4) ...	20
" "		(5) ...	" "	"	"	20
" "		(6) ...	32 and 33 Vic. c. 71 s.	6	(5) ...	20
" "		(7) ...	" "	"	"	20
" "		(8) ...	" "	"	"	21
" "		(9) ...	32 and 33 Vic. c. 71 s.	6	(6) ...	21
" "		(10) ...	" "	"	"	21
" "		(11) ...	" "	"	"	21
" "		(12) ...	" "	"	"	22
" "		(13) ...	" "	"	"	22
" "		(14) ...	" "	"	"	22
" "	45	...	32 and 33 Vic. c. 71 s.	6	...	22
" "	46	...	" "	"	6	22
" "	47	...	" "	"	6	23
" "	48	...	" "	"	7	24
" "	49	...	" "	"	7	25
" "	50	...	E. R. 1870, r. 27	...	...	26
" "	51	...	" "	"	"	26
" "	52	{	32 and 33 Vic. c. 71 s.	80	(1) ...	27
" "	53	{	E. R. 1879, r. 15	80	(7) ...	
" "	54	...	" "	"	"	28
" "	55	...	" "	"	"	28
" "	56	...	" "	"	"	28
" "	57	...	" "	"	"	29
" "	58	...	" "	"	"	29
" "	59	...	" "	"	"	29
" "	60	...	" "	"	"	30
" "	61	...	" "	"	"	30
" "	62	...	" "	"	"	30
" "	63	...	32 and 33 Vic. c. 71 s.	8	...	31
" "	64	...	" "	"	9	31
" "	65	...	" "	"	9	32
" "	66	...	" "	"	"	32
" "	67	...	E. R. 1870, r. 31	...	...	32
" "	68	...	32 and 33 Vic. c. 71 ss.	100, 101	...	33
" "	69	...	" "	"	"	33
" "	70	...	32 and 33 Vic. c. 71 s.	10	...	34
" "	71	...	33 and 34 Vic. c. 76 s.	1	...	35
" "	71	...	" "	"	2	36
" "	71	...	" "	"	3	36
" "	72	...	32 and 33 Vic. c. 71 s.	86	...	36
" "	73	...	" "	"	"	37
" "	74	...	32 and 33 Vic. c. 71 s.	11	...	38
" "	75	...	" "	"	12	39
" "	76	...	" "	"	"	39
" "	77	...	32 and 33 Vic. c. 71 s.	13	...	40
" "	78	...	" "	"	"	41
" "	79	...	" "	"	"	42
" "	80	...	" "	"	"	42
" "	81	...	" "	"	"	42
" "	82	...	" "	"	"	42
" "	83	...	" "	"	"	43

Sections of Act.		Corresponding Sections of English Statute or Rules.		page.
38 Vic. No. 5 s.	84	...	32 and 33 Vic. c. 71 s. 17	44
" "	85	...	E. R. 1870, r. 103	44
" "	86	...	32 and 33 Vic. c. 71 s. 14	44
" "	87	...	" " " 15	44-46
" "	88	...	" " " "	46
" "	89	...	" " " "	47
" "	90	...	" " " "	47
" "	91	...	" " " "	48
" "	92	...	32 and 33 Vic. c. 71 s. 14	48-50
" "	93	(1) ...	" " " 16 (1) ...	50
" "		(2) ...	" " " (2) ...	50
" "		(3) ...	" " " (3) ...	51
" "		(4) ...	" " " (4) ...	51
" "		(5) ...	" " " (6) ...	51
" "		(6) ...	" " " (7) ...	51
" "		(7) ...	" " " (8) ...	52
" "		(8) ...	" " " "	52
" "	94	...	32 and 33 Vic. c. 71 s. 18	52
" "	95	...	" " " 84	53
" "	96	...	" " " 17	53
" "	97	...	" " " 17	53
" "	98	...	" " " "	53
" "	99	...	" " " "	54
" "	100	...	" " " "	54
" "	101	...	32 and 33 Vic. c. 71 s. 83	54
" "		(1) ...	" " " (1) ...	55
" "		(2) ...	" " " (2) ...	55
" "		(3) ...	" " " (3) ...	56
" "		(4) ...	" " " (4) ...	56
" "		(5) ...	" " " (4) ...	56
" "		(6) ...	" " " (5) ...	56
" "		(7) ...	" " " (6) ...	57
" "		(8) ...	" " " (7) ...	57
" "		(9) ...	" " " (8) ...	57
" "		(10) ...	" " " (9) ...	58
" "		(11) ...	" " " (10) ...	58
" "		(12) ...	" " " (11) ...	58
" "		(13) ...	" " " (12) ...	58
" "		(14) ...	" " " (13) ...	58
" "		(15) ...	" " " (14) ...	58
" "		(16) ...	" " " (15) ...	59
" "		(17) ...	" " " (16) ...	59
" "		(18) ...	" " " (17) ...	59
" "		(19) ...	" " " "	59
" "	102	...	32 and 33 Vic. c. 71 s. 87	60
" "	103	...	" " " 89	61
" "	104	...	" " " 90	61
" "	105	...	" " " "	61, 62
" "	106	...	32 and 33 Vic. c. 71 s. 91	63
" "	107	...	" " " 92	64
" "	108	...	" " " "	64
" "	109	...	" " " "	65
" "	110	...	" " " "	66
" "	111	...	32 and 33 Vic. c. 71 s. 93	66

Sections of Act.		Corresponding Sections of English Statute or Rules.		Page.
38 Vic. No. 5 s.	112	32 and 33 Vic. c. 71 s.	94	67
"	113	"	95	68
"	114	"	96	69
"	115	"	97	70
"	116	32 and 33 Vic. c. 71 s.	97	71
"	117	"	98	71
"	118	"	99	71
"	119	"	100	72
"	120	"	101	72
"	121	32 and 33 Vic. c. 71 s.	85	73
"	122	"	19	73
"	123	"	20	74
"	124	"	20	75
"	125	"	20	75
"	126	"	20	76
"	127	E. R. 1870, r. 112	21	76
"	128	32 and 33 Vic. c. 71 s.	21	77
"	129	"	22	77
"	130	"	23	78
"	131	"	24	79
"	132	"	25	80
"	(1)	"	(1)	80
"	(2)	"	(2)	80
"	(3)	"	(5)	80
"	(4)	"	(6)	81
"	(5)	"	(7)	81
"	(6)	"	(8)	81
"	(7)	"	(4)	81
"	133	"	27	81
"	(1)	"	(1)	82
"	(2)	"	26	82
"	(3)	"	25 (3)	82
"	(4)	"	27 (2)	82
"	(5)	"	(3)	82
"	(6)	"	(4)	83
"	(7)	"	(5)	83
"	(8)	"	"	83
"	134	"	28	83, 84
"	135	"	29	85
"	136	"	30	85
"	137	"	"	86
"	138	"	"	86
"	139	"	"	87
"	140	32 and 33 Vic. c. 71 s.	31	87, 88
"	141	E. R. 1870, r. 77	"	89
"	142	"	"	90
"	143	32 and 33 Vic. c. 71 s.	32	90
"	144	"	33	91
"	145	"	34	92
"	146	"	35	92
"	147	"	36	93
"	148	"	37	93
"	149	"	38	93
"	150	"	39	93

Sections of Act.		Corresponding Sections of English Statute or Rules.	Page.
38 Vic. No. 5 s.	151	32 and 33 Vic. c. 71 s. 40	94
" "	152	" " " 41	95
" "	153	" " " 42	95
" "	154	" " " 43	96
" "	155	" " " 44	96
" "	156	E. R. 1870, r. 132	96
" "	157	32 and 33 Vic. c. 71 s. 45	96
" "	158	" " " 46	97
" "	159	" " " 102	97
" "	160	" " " 103	97
" "	161	" " " 104	98
" "	162	" " " 105	98
" "	163	" " " "	99
" "	164	" " " "	99
" "	165	" " " "	100
" "	166	32 and 33 Vic. c. 71 s. 47	101
" "	167	" " " 48	102-106
" "	168	" " " "	106-108
" "	169	" " " "	108
" "	170	" " " "	109
" "	171	" " " "	109
" "	172	" " " "	110
" "	173	32 and 33 Vic. c. 71 s. 49	110
" "	174	" " " 49	111
" "	175	" " " 50	111
" "	176	" " " 54	111, 112
" "	177	" " " 80	113
" "	(1)	" " " (2)	113
" "	(2)	" " " (4)	113
" "	(3)	" " " "	113
" "	(4)	32 and 33 Vic. c. 71 s. 80 (5)	114
" "	(5)	" " " (6)	114
" "	(6)	" " " "	114
" "	(7)	32 and 33 Vic. c. 71 s. 80 (7)	114
" "	(8)	" " " "	115
" "	(9)	32 and 33 Vic. c. 71 s. 80 (8)	115
" "	(10)	" " " (9)	115
" "	(11)	" " " (10)	115
" "	178	" " " 81	116
" "	179	" " " 82	117
" "	180	" " " 106	117
" "	181	" " " 107	118
" "	182	" " " "	118
" "	183	E. R. 1870, r. 207	119
" "	184	32 and 33 Vic. c. 71 s. 108	119
" "	185	" " " 109	119
" "	186	" " " "	120
" "	187	32 and 33 Vic. c. 71 s. 110	120
" "	188	" " " 111	120
" "	189	" " " 112	121
" "	190	" " " 113	121
" "	191	" " " "	121
" "	192	" " " "	122
" "	193	32 and 33 Vic. c. 71 s. 56	122

Sections of Act.		Corresponding Sections of English Statute or Rules.		Page.
38 Vic. No. 5 s.	194	...	32 and 33 Vic. c. 71 s. 57	123
" "	195	...	" " " 58	123
" "	196	...	" " " 115	124
" "	197	...	" " " 51	124, 125
" "	198	...	" " " 52	126
" "	199	...	" " " 53	126
" "	200	...	" " " 116	127
" "	201	...	" " " 117	127
" "	202	...	" " " 125	127-135
" "	203	...	" " " 127	135
" "	204	...	" " " 126	135-140
" "	205	...	" " " 127	140
" "	206	...	32 and 33 Vic. c. 62 s. 11	140-144
" "	207	...	" " " 12	145
" "	208	...	" " " 13	145
" "	209	...	" " " 14	146
" "	210	...	...	146
" "	211	...	...	146
" "	212	...	...	147
" "	213	...	...	147
" "	214	...	...	147
" "	215	...	32 and 33 Vic. c. 62 s. 15	147
" "	216	...	...	148
" "	217	...	32 and 33 Vic. c. 62 s. 16	148
" "	218	...	" " " 17	149
" "	219	...	" " " 19	149
" "	220	...	" " " 20	149
" "	221	...	" " " 23	149
" "	222	...	...	150
" "	223	...	...	150
" "	224	...	...	150
" "	225	...	...	150

RULES.

TABULAR ANALYSIS OF INSOLVENCY RULES,

1ST OF OCTOBER, 1874,

With references to the corresponding English Rules and Orders printed in the text.

No. of Rule.					Corresponding English Rule.					Page.
					Bankruptcy Rules, 1st of January, 1870.					
Rule	1	...	...	...	Rule	1	...	...	...	154
"	2	...	...	...	"	5	...	...	...	155
"	3	...	...	...	"	6	...	...	...	155
"	4	...	...	...	"	7	...	...	...	155
"	5	...	...	...	"	9	...	...	...	155
"	6	...	...	...	"	10	...	...	...	156
"	7	...	...	...	"	11	...	...	...	156
"	8	...	...	...	"	12	...	...	...	156
"	9	...	...	...	"	13	...	...	...	156
"	10	...	...	...	"	14	...	...	...	157
"	11	...	...	...	"	16	...	...	...	157
"	12	...	...	...	"	15	...	...	...	157
"	13	...	...	...	"	18	...	...	...	158
"	14	...	...	...	"	19	...	...	...	158
"	15	...	...	...	"	20	...	...	...	158
"	16	...	...	...	...	...	...	...	...	158
"	17	...	...	...	Rule	21	...	...	...	158
"	18	...	...	...	"	22	...	...	...	159
"	19	...	...	...	"	23	...	...	...	159
"	20	...	...	...	"	24	...	...	...	159
"	21	...	...	...	"	25	...	...	...	159
"	22	...	...	...	...	...	...	...	...	160
"	23	...	...	...	Rule	30	...	...	...	160
"	24	...	...	...	"	33	...	...	...	160
"	25	...	...	...	...	...	...	...	...	161
"	26	...	...	...	Rule	35	...	...	...	161
"	27	...	...	...	"	36	...	...	...	161
"	28	...	...	...	"	38	...	...	...	161
"	29	...	...	...	"	39	...	...	...	162
"	30	...	...	...	"	41	...	...	...	162
"	31	...	...	...	"	42	...	...	...	162
"	32	...	...	...	"	43	...	...	...	162
"	33	...	...	...	"	44	...	...	...	163
"	34	...	...	...	"	47	...	...	...	163
"	35	...	...	...	"	48	...	...	...	163

No. of Rule.					Corresponding English Rule.	Page.
					Bankruptcy Rules, 1st of January, 1870.	
Rule	36	...	...	...	Rule 45	164
"	37	...	...	...	...	164
"	38	...	...	...	Rule 50	164
"	39	...	...	...	" 51	165
"	40	...	...	...	" 52	165
"	41	...	...	...	" 53	166
"	42	...	...	...	" 54	166
"	43	...	...	...	" 55	166
"	44	...	...	...	" 56	166
"	45	...	...	...	" 57	166
"	46	...	...	...	" 59	167
"	47	...	...	...	" 60	167
"	48	...	...	...	" 61	167
"	49	...	...	...	" 62	167
"	50	...	...	...	" 63	167
"	51	...	...	...	" 65	167
"	52	...	...	...	" 66	168
"	53	...	...	...	" 67	168
"	54	...	...	...	" 68	168
"	55	...	...	...	" 69	168
"	56	...	...	...	" 72	168
"	57	...	...	...	" 73	169
"	58	...	...	...	" 74	169
"	59	...	...	...	" 75	169
"	60	...	...	...	" 76	169
"	61	...	...	...	" 77	170
"	62	...	...	...	" 78	170
"	63	...	...	...	" 79	171
"	64	...	...	...	" 80	171
"	65	...	...	...	" 81	172
"	66	...	...	...	...	172
"	67	...	...	...	Rule 84	172
"	68	...	...	...	" 82	172
"	69	...	...	...	" 83	173
"	70	...	...	...	" 85	173
"	71	...	...	...	" 86	173
"	72	...	...	...	" 90	173
"	73	...	...	...	...	173
"	74	...	...	...	Rule 91	174
"	75	...	...	...	" 87	174
"	76	...	...	...	" 88	174
"	77	...	...	...	" 89	174
"	78	...	...	...	" 93	175
"	79	...	...	...	" 94	175
"	80	...	...	...	" 95	175
"	81	...	...	...	" 111	175
"	82	...	...	...	" 97	175
"	83	...	...	...	" 98	176
"	84	...	...	...	" 99	176
"	85	...	...	...	" 100	176
"	86	...	...	...	" 101	176
"	87	...	...	...	" 102	176

No. of Rule.				Corresponding English Rule.	Page.
				Bankruptcy Rules, 1st of January, 1870.	
Rule 88	...	...	...	Rule 104	176
" 89	...	...	...	" 105	177
" 90	...	...	...	" 106	177
" 91	...	...	...	" 107	177
" 92	...	...	...	" 108	177
" 93	...	...	...	" 109	177
" 94	...	...	...	" 111	178
" 95	...	...	...	" 112	178
" 96	...	...	...	" 113	178
" 97	...	...	...	" 114	178
" 98	...	...	...	" 115	178
" 99	...	...	...	" 116	179
" 100	...	...	...	" 117	179
" 101	...	...	...	" 118	179
" 102	...	...	...	" 119	179
" 103	...	...	...	" 120	179
" 104	...	...	...	" 121	180
" 105	...	...	...	" 122	180
" 106	...	...	...	" 123	180
" 107	...	...	...	" 124	181
" 108	...	...	...	" 125	181
" 109	...	...	...	" 126	181
" 110	...	...	...	" 127	181
" 111	...	...	...	" 128	181
" 112	...	...	...	" 129	182
" 113	...	...	...	" 130	182
" 114	...	...	...	" 131	182
" 115	...	...	...	" 132	182
" 116	...	...	...	" 133	182
" 117	...	...	...	" 134	182
" 118	...	...	...	" 135	182
" 119	...	...	...	" 136	183
" 120	...	...	...	" 137	183
" 121	...	...	...	" 138	184
" 122	...	...	...	" 139	184
" 123	...	...	...	" 142	184
" 124	...	...	...	" 143	185
" 125	...	...	...	" 144	185
" 126	...	...	...	" 145	185
" 127	...	...	...	" 146	185
" 128	...	...	...	" 147	185
" 129	...	...	...	" 148	185
" 130	...	...	...	" 149	186
" 131	...	...	...	...	186
" 132	...	...	...	Rule 157	186
" 133	...	...	...	" 158	187
" 134	...	...	...	" 159	187
" 135	...	...	...	" 160	187
" 136	...	...	...	" 161	187
" 137	...	...	...	" 162	187
" 138	...	...	...	" 163	188
" 139	...	...	...	" 164	188

No. of Rule.				Corresponding English Rule.	Page.
				Bankruptcy Rules, 1st of January, 1870.	
Rule 140	...	...	...	Rule 165	188
" 141	...	...	...	" 166	188
" 142	...	...	...	" 167	188
" 143	...	...	...	" 168	189
" 144	...	...	...	" 169	189
" 145	...	...	...	" 170	189
" 146	...	...	...	" 171	189
" 147	...	...	...	" 172	189
" 148	...	...	...	" 173	190
" 149	...	...	...	" 174	190
" 150	...	...	...	" 176	190
" 151	...	...	...	" 177	190
" 152	...	...	...	" 178	190
" 153	...	...	...	" 179	191
" 154	...	...	...	" 180	191
" 155	...	...	...	" 181	191
" 156	...	...	...	" 182	191
" 157	...	...	...	" 183	192
" 158	...	...	...	" 184	192
" 159	...	...	...	" 185	192
" 160	...	...	...	" 187	192
" 161	...	...	...	" 189	193
" 162	...	...	...	" 190	193
" 163	...	...	...	...	193
" 164	...	...	...	Rule 203	193
" 165	...	...	...	" 205	193
" 166	...	...	...	...	194
" 167	...	...	...	...	194
" 168	...	...	...	Rule 229	194
" 169	...	...	...	...	194
" 170	...	...	...	Rule 234	194
" 171	...	...	...	" 235	195
" 172	...	...	...	" 237	195
" 173	...	...	...	" 238	195
" 174	...	...	...	" 239	195
" 175	...	...	...	" 240	195
" 176	...	...	...	" 241	196
" 177	...	...	...	" 242	196
" 178	...	...	...	" 243	196
" 179	...	...	...	" 244	196
" 180	...	...	...	" 245	196
" 181	...	...	...	" 246	196
" 182	...	...	...	" 247	196
" 183	...	...	...	" 248	197
" 184	...	...	...	" 249	197
" 185	...	...	...	" 250	197
" 186	...	...	...	" 251	198
" 187	...	...	...	" 252	198
" 188	...	...	...	" 254	198
" 189	...	...	...	" 255	199
" 190	...	...	...	" 256	199
" 191	...	...	...	" 257	199

No. of Rule.				Corresponding English Rule.	Page.
				Bankruptcy Rules, 1st of January, 1870.	
Rule 192	...	...	...	Rule 258	199
" 193	...	...	...	" 259	199
" 194	...	...	...	" 260	200
" 195	...	...	...	" 261	200
" 196	...	...	...	" 262	201
" 197	...	...	...	" 263	201
" 198	...	...	...	" 264	202
" 199	...	...	...	" 265	202
" 200	...	...	...	" 266	202
" 201	...	...	...	" 267	202
" 202	...	...	...	" 268	202
" 203	...	...	...	" 269	203
" 204	...	...	...	" 270	203
" 205	...	...	...	" 271	203
" 206	...	...	...	" 272	203
" 207	...	...	...	" 273	203
" 208	...	...	...	" 274	204
" 209	...	...	...	" 275	204
" 210	...	...	...	" 276	205
" 211	...	...	...	" 277	205
" 212	...	...	...	" 278	205
" 213	...	...	...	" 279	205
" 214	...	...	...	" 280	206
" 215	...	...	...	" 281	206
" 216	...	...	...	" 282	206
" 217	...	...	...	" 283	207
" 218	...	...	...	" 284	207
" 219	...	...	...	" 285	207
" 220	...	...	...	" 286	208
" 221	...	...	...	" 287	209
" 222	...	...	...	" 288	209
" 223	...	...	...	" 289	209
" 224	...	...	...	" 290	210
" 225	...	...	...	" 291	210
" 226	...	...	...	" 292	210
" 227	...	...	...	" 293	210
" 228	...	...	...	" 294	210
" 229	...	...	...	" 295	211
" 230	...	...	...	" 296	211
" 231	...	...	...	" 297	211
" 232	...	...	...	" 298	211
" 233	...	...	...	" 299	212
" 234	...	...	...	" 300	212
" 235	...	...	...	" 301	212
" 236	...	...	...	" 302	212
" 237	...	...	...	" 303	213
" 238	...	...	...	" 304	213
" 239	...	...	...	" 305	213
" 240	...	...	...	" 306	213
" 241	...	...	...	" 307	213
" 242	...	...	...	" 308	214
" 243	...	...	...	" 309	214

No. of Rule.				Corresponding English Rule.				Page.
				Bankruptcy Rules, 1st of January, 1870.				
Rule 244	...	...	...	Rule 310	...	...	...	214
" 245	...	...	...	" 311	...	...	...	214
" 246	...	...	...	" 312	...	...	...	214
" 247	...	...	...	" 313	...	...	...	215
" 248	...	...	...	" 314	...	...	...	215
" 249	...	...	...	...	...	...	...	216
" 250	...	...	...	...	...	...	...	216
" 251	...	...	...	...	...	...	...	216
" 252	...	...	...	...	...	...	...	216
" 253	...	...	...	...	...	...	...	216
Sched. Form 1	...	...	...	Sched. Form 1	...	...	...	220
" " 2	...	...	...	" " 2	...	...	...	220
" " 3	...	...	...	" " 3	...	...	...	221
" " 4	...	...	...	" " 4	...	...	...	221
" " 5	...	...	...	" " 8	...	...	...	222
" " 6	...	...	...	" " 9	...	...	...	222
" " 7	...	...	...	" " 13	...	...	...	223
" " 8	...	...	...	" " 15	...	...	...	223
" " 9	...	...	...	" " 16	...	...	...	224
" " 10	...	...	...	" " 17	...	...	...	224
" " 11	...	...	...	" " 18	...	...	...	224
" " 12	...	...	...	" " 19	...	...	...	225
" " 13	...	...	...	" " 20	...	...	...	226
" " 14	...	...	...	" " 21	...	...	...	226
" " 15	...	...	...	" " 23	...	...	...	227
" " 16	...	...	...	" " 24	...	...	...	227
" " 17	...	...	...	" " 25	...	...	...	227
" " 18	...	...	...	" " 26	...	...	...	228
" " 19	...	...	...	" " 27	...	...	...	228
" " 20	...	...	...	" " 30	...	...	...	228
" " 21	...	...	...	" " 31	...	...	...	229
" " 22	...	...	...	" " 32	...	...	...	229
" " 23	...	...	...	" " 33	...	...	...	230
" " 24	...	...	...	" " 34	...	...	...	230
" " 25	...	...	...	" " 35	...	...	...	230
" " 26	...	...	...	" " 36	...	...	...	231
" " 27	...	...	...	" " 38	...	...	...	232
" " 28	...	...	...	" " 39	...	...	...	232-235
" " 29	...	...	...	" " 40	...	...	...	235
" " 30	...	...	...	" " 41	...	...	...	236
" " 31	...	...	...	" " 42	...	...	...	236
" " 32	...	...	...	" " 22	...	...	...	236
" " 33	...	...	...	" " 37	...	...	...	236
" " 34	...	...	...	...	...	...	...	237
" " 35	...	...	...	Sched. Form 44	...	...	...	237
" " 36	...	...	...	" " 45	...	...	...	237
" " 37	...	...	...	" " 46	...	...	...	238
" " 38	...	...	...	" " 47	...	...	...	238
" " 39	...	...	...	" " 48	...	...	...	238
" " 40	...	...	...	" " 49	...	...	...	239
" " 41	...	...	...	" " 50	...	...	...	239
" " 42	...	...	...	" " 51	...	...	...	240

No. of Rule.			Corresponding English Rule.			Page.
			Bankruptcy Rules, 1st of January, 1870.			
Sched. Form 43	...	...	Sched. Form 52	...	...	240
" " 44	...	...	" " 53	...	...	240
" " 45	...	...	" " 54	...	...	241
" " 46	...	...	" " 55	...	...	241
" " 47	...	...	" " 56	...	...	241
" " 48	...	...	" " 57	...	...	242
" " 49	...	...	" " 58	...	...	242
" " 50	...	...	" " 59	...	...	242
" " 51	...	...	" " 60	...	...	243
" " 52	...	...	" " 61	...	...	243
" " 53	...	...	" " 64	...	...	243
" " 54	...	...	" " 66	...	...	244
" " 55	...	...	" " 67	...	...	244
" " 56	...	...	" " 48	...	...	245
" " 57	...	...	" " 69	...	...	245
" " 58	...	...	" " 70	...	...	245
" " 59	...	...	" " 71	...	...	245
" " 60	...	...	" " 72	...	...	246
" " 61	...	...	" " 73	...	...	246
" " 62	...	...	" " 74	...	...	247
" " 63	...	...	" " 76	...	...	248
" " 64	...	...	" " 77	...	...	248
" " 65	...	...	" " 78	...	...	248
" " 66	...	...	" " 79	...	...	249
" " 67	...	...	" " 80	...	...	249
" " 68	...	...	" " 81	...	...	249
" " 69	...	...	" " 82	...	...	250
" " 70	...	...	" " 83	...	...	250
" " 71	...	...	" " 84	...	...	250
" " 72	...	...	" " 85	...	...	251
" " 73	...	...	" " 86	...	...	252
" " 74	...	...	" " 87	...	...	252
" " 75	...	...	" " 88	...	...	252
" " 76	...	...	" " 89	...	...	253
" " 77	...	...	" " 90	...	...	253
" " 78	...	...	" " 91	...	...	253
" " 79	...	...	" " 92	...	...	254
" " 80	...	...	" " 93	...	...	254
" " 81	...	...	" " 94	...	...	255
" " 82	...	...	" " 95	...	...	255
" " 83	...	...	" " 96	...	...	255
" " 84	...	...	" " 101	...	...	256
" " 85	...	...	" " 102	...	...	256
" " 86	...	...	" " 104	...	...	257
" " 87	...	...	" " 105	...	...	258
" " 88	...	...	" " 106	...	...	259
" " 89	...	...	" " 107	...	...	260
" " 90	...	...	" " 108	...	...	260
" " 91	...	...	" " 109	...	...	261
" " 92	...	...	" " 110	...	...	262
" " 93	...	...	" " 111	...	...	262
" " 94	...	...	" " 112	...	...	262

No. of Rule.	Corresponding English Rule.	Page.
Bankruptcy Rules, 1st of January, 1870.		
Sched. Form 95	Sched. Form 113	263
" " 96	" " 114	263
" " 97	" " 115	264
" " 98	" " 116	264
" " 99	" " 117	265
" " 100	" " 118	265
" " 101	" " 119	266
" " 102	" " 120	266
" " 103	" " 121	266
" " 104	" " 122	267
" " 105	" " 123	267
" " 106	" " 124	267
" " 107	" " 125	268
" " 108	" " 126	268
" " 109	" " 129	268
" " 110	" " 130	269
" " 111	" " 131	269
" " 112	" " 132	270
" " 113	" " 134	270
" " 114	" " 135	270
" " 115	" " 136	270
Table I. ... ..	... ..	271
" II. ... ..	... ..	275
Reg. Gen., 5th September, 1876.		
Rule 1 ... ..	... ..	277
" 2 ... ..	... ..	277
" 3 ... ..	... ..	277
" 4 ... ..	... ..	277
Reg. Gen., 17th August, 1877.		
Rule 1 ... ..	... ..	278
" 2 ... ..	... ..	278
" 3 ... ..	... ..	278
" 4 ... ..	... ..	278
" 5 ... ..	... ..	278
" 6 ... ..	... ..	278
" 7 ... ..	... ..	278
" 8 ... ..	... ..	279
" 9 ... ..	... ..	279
" 10 ... ..	... ..	279
" 11 ... ..	... ..	279
Reg. Gen., 29th August, 1878.		
Rule 1 ... ..	... ..	280
" 2 ... ..	... ..	280
Reg. Gen., 12th December, 1879. }		
... ..	... ..	280

TABULAR ANALYSIS OF ENGLISH STATUTE

*With references to the corresponding Queensland Statute 38 Vic., No. 5,
in the text.*

Sections of English Statute.	Corresponding Sections of Queensland Statute or Rules.	Page.
32 and 33 Vic. c. 71 s. 4 ...	{ 38 Vic. No. 5 s. 4 ...	2-4
" " " 16 (5) ...	" " 30 ...	14
" " " 5 ...	" " 44 (1) ...	19
" " " 6 (1) ...	" " (2) ...	19
" " " (2) ...	" " (3) ...	19
" " " (3) ...	" " (4) ...	20
" " " (4) ...	" " (6) ...	20
" " " (5) ...	" " 45 ...	22
" " " 6 ...	" " 46 ...	23
" " " 6 ...	" " 47 ...	23
" " " 7 ...	" " 48 ...	24
" " " 7 ...	" " 49 ...	25
" " " 8 ...	" " 63 ...	31
" " " 9 ...	" " 64 ...	31
" " " 9 ...	" " 65 ...	32
" " " 10 ...	" " 70 ...	34
" " " 11 ...	" " 74 ...	38
" " " 12 ...	" " 75 ...	39
" " " 13 ...	" " 77 ...	40
" " " 14 ...	" " 86 ...	44
" " " 14 ...	" " 92 ...	48
" " " 15 ...	" " 87 ...	44
" " " 16 (1) ...	" " 93 (1) ...	50
" " " (2) ...	" " (2) ...	50
" " " (3) ...	" " (3) ...	51
" " " (4) ...	" " (4) ...	51
" " " (6) ...	" " 93 (5) ...	51
" " " (7) ...	" " (6) ...	51
" " " (8) ...	" " (7) ...	52
" " " 17 ...	" " 84 ...	44
" " " 17 ...	" " 96 ...	53
" " " 17 ...	" " 97 ...	53
" " " 18 ...	" " 94 ...	52
" " " 19 ...	" " 122 ...	73
" " " 20 ...	" " 123 ...	74
" " " 20 ...	" " 124 ...	75
" " " 20 ...	" " 125 ...	75
" " " 20 ...	" " 126 ...	76
" " " 21 ...	" " 128 ...	77
" " " 22 ...	" " 129 ...	77
" " " 23 ...	" " 130 ...	78

Sections of English Statute.	Corresponding Sections of Queensland Statute or Rules.	Page.
32 and 33 Vic. c. 71 s. 24 ...	38 Vic. No. 5 s. 131 ...	79
" " " 25 (1) ...	" " 132 (1) ...	80
" " " (2) ...	" " 133 (2) ...	80
" " " (3) ...	" " 133 (3) ...	82
" " " (4) ...	" " 132 (7) ...	81
" " " (5) ...	" " (3) ...	80
" " " (6) ...	" " (4) ...	81
" " " (7) ...	" " (5) ...	81
" " " 25 (8) ...	" " (6) ...	81
" " " 26 ...	" " 133 (2) ...	82
" " " 27 (1) ...	" " 133 (1) ...	82
" " " (2) ...	" " (4) ...	82
" " " (3) ...	" " (5) ...	82
" " " 25 (4) ...	" " (6) ...	83
" " " (5) ...	" " (7) ...	83
" " " 28 ...	" " 134 ...	83-84
" " " 29 ...	" " 135 ...	85
" " " 30 ...	" " 136 ...	85
" " " 31 ...	" " 140 ...	87-88
" " " 32 ...	" " 143 ...	90
" " " 33 ...	" " 144 ...	91
" " " 34 ...	" " 145 ...	92
" " " 35 ...	" " 146 ...	92
" " " 36 ...	" " 147 ...	93
" " " 37 ...	" " 148 ...	93
" " " 38 ...	" " 149 ...	93
" " " 39 ...	" " 150 ...	93
" " " 40 ...	" " 151 ...	94
" " " 41 ...	" " 152 ...	95
" " " 42 ...	" " 153 ...	95
" " " 43 ...	" " 154 ...	96
" " " 44 ...	" " 155 ...	96
" " " 45 ...	" " 157 ...	96
" " " 46 ...	" " 158 ...	97
" " " 47 ...	" " 166 ...	101
" " " 48 ...	" " 167 ...	102-106
" " " 49 ...	" " 173 ...	110
" " " 49 ...	" " 174 ...	111
" " " 50 ...	" " 175 ...	111
" " " 51 ...	" " 197 ...	124-125
" " " 52 ...	" " 198 ...	126
" " " 53 ...	" " 199 ...	126
" " " 54 ...	" " 176 ...	111
" " " 56 ...	" " 193 ...	122
" " " 57 ...	" " 194 ...	123
" " " 58 ...	" " 195 ...	123
" " " 65 ...	" " 10 ...	7
" " " 65 ...	" " 11 ...	7
" " " 71 ...	" " 14 ...	8
" " " 71 ...	" " 15 ...	8
" " " 71 ...	" " 16 ...	9
" " " 72 ...	" " 22 ...	10
" " " 72 ...	" " 23 ...	11
" " " 74 ...	" " 25 ...	12

Sections of English Statute.	Corresponding Sections of Queensland Statute or Rules.	Page.
32 and 33 Vic. c. 71 s. 77 ...	38 Vic. No. 5 s. 26 ...	13
" " " 78 ...	" " 27 ...	13
" " " 78 ...	" " 28 ...	13
" " " 78 ...	" " 29 ...	14
" " " 80 (1) ...	" " 52 ...	27
" " " (2) ...	" " 177 (1) ...	113
" " " (4) ...	" " (2) ...	113
" " " (5) ...	" " (3) ...	113
" " " (6) ...	" " (4) ...	114
" " " (7) ...	" " (5) ...	114
" " " (8) ...	" " (6) ...	114
" " " (9) ...	" " (7) ...	114
" " " (10) ...	" " 177 (9) ...	115
" " " 81 ...	" " (10) ...	115
" " " 82 ...	" " (11) ...	115
" " " 83 (1) ...	" " 178 ...	116
" " " (2) ...	" " 179 ...	117
" " " (3) ...	" " 101 (1) ...	55
" " " (4) ...	" " (2) ...	55
" " " (4) ...	" " (3) ...	56
" " " (5) ...	" " (4) ...	56
" " " (6) ...	" " (5) ...	56
" " " (7) ...	" " (6) ...	56
" " " (8) ...	" " (7) ...	57
" " " (9) ...	" " (8) ...	57
" " " (10) ...	" " (9) ...	57
" " " (11) ...	" " (10) ...	58
" " " (12) ...	" " (11) ...	58
" " " (13) ...	" " (12) ...	58
" " " (14) ...	" " (13) ...	58
" " " (15) ...	" " (14) ...	58
" " " (16) ...	" " (15) ...	58
" " " (17) ...	" " (16) ...	59
" " " 84 ...	" " (17) ...	59
" " " 85 ...	" " (18) ...	59
" " " 86 ...	" " 95 ...	53
" " " 87 ...	" " 121 ...	73
" " " 88 ...	" " 72 ...	36
" " " 89 ...	" " 102 ...	60
" " " 90 ...	" " 103 ...	61
" " " 91 ...	" " 104 ...	61
" " " 92 ...	" " 106 ...	63
" " " 93 ...	" " 107 ...	64
" " " 94 ...	" " 111 ...	66
" " " 95 ...	" " 112 ...	67
" " " 96 ...	" " 113 ...	68
" " " 97 ...	" " 114 ...	69
" " " 98 ...	" " 116 ...	71
" " " 99 ...	" " 117 ...	71
" " " 100 ...	" " 118 ...	71
" " " 101 ...	" " 68 ...	33
" " " 102 ...	" " 159 ...	97
" " " 103 ...	" " 160 ...	97

Sections of English Statute.	Corresponding Sections of Queensland Statute or Rules.	Page.
32 and 33 Vic. c. 71 s. 104 ...	38 Vic. No. 5 s. 161	98
" " " 105 ...	" " 162	98
" " " 106 ...	" " 180	117
" " " 107 ...	" " 181	118
" " " 108 ...	" " 184	119
" " " 109 ...	" " 185	119
" " " 110 ...	" " 187	120
" " " 111 ...	" " 188	120
" " " 112 ...	" " 189	121
" " " 113 ...	" " 190	121
" " " 115 ...	" " 196	124
" " " 116 ...	" " 200	127
" " " 117 ...	" " 201	127
" " " 125 ...	" " 202	127-135
" " " 125 (14)	" " 5	5
" " " 126 ...	" " 204	135-140
" " " 127 ...	" " 203	135
" " " 127 .	" " 205	140

32 and 38 Vic., c. 71, s. 62, ss. 11 to 23, inclusive, are embodied in Part XI of 38 Vic., No. 5—"Offences"—pp. 140-149.

TABULAR ANALYSIS OF ENGLISH BANKRUPTCY RULES,

With References to the corresponding Queensland Rules printed in the Text.

Rules of English Orders.					Corresponding Rules of Queensland Orders or Statute.					Page.
					Insolvency Rules, 1st October, 1874.					
Rule	1	...	...	...	Rule	1	..	...	...	154
"	5	...	...	...	"	2	...	...	...	155
"	6	...	...	..	"	3	...	...	...	155
"	7	..	...	...	"	4	...	...	...	155
"	9	...	...	...	"	5	...	...	...	155
"	10	...	...	...	"	6	...	...	...	156
"	11	...	...	...	"	7	..	...	...	156
"	12	...	...	...	"	8	...	...	...	156
"	13	...	...	...	"	9	..	...	...	156
"	14	...	...	...	"	10	...	...	...	157
"	15	...	...	...	"	12	..	...	...	157
					{	38 Vic. No. 5 s.	52	...	...	27
					Insolvency Rules, 1st October, 1874.					
"	16	...	...	...	Rule	11	..	...	...	157
"	18	...	..	...	"	13	...	...	...	158
"	19	...	...	...	"	14	...	...	...	158
"	20	...	...	...	"	15	...	...	...	158
"	21	...	...	...	"	17	...	...	...	158
"	22	...	...	...	"	18	...	..	...	159
"	23	...	...	...	"	19	...	..	...	159
"	24	...	...	...	"	20	...	...	...	159
"	25	...	...	...	"	21	..	...	...	159
"	27	...	...	...		38 Vic. No. 5 s.	50	...	...	26
					Insolvency Rules, 1st October, 1874.					
"	30	...	...	...	Rule	23	...	...	...	160
"	33	...	...	...		38 Vic. No. 5 s.	67	...	..	32
					Insolvency Rules, 1st October, 1874.					
"	33	...	...	...	Rule	24	...	...	...	160
"	35	...	...	...	"	26	...	...	...	161
"	36	...	...	...	"	27	...	...	...	161
"	38	...	...	...	"	28	...	...	...	161
"	39	...	...	...	"	29	...	...	...	162
"	41	..	...	...	"	30	...	...	...	162

Rules of English Orders.				Corresponding Rules of Queensland Orders or Statute.				Page.
				Insolvency Rules, 1st October, 1874.				
Rule	42	...	...	Rule	31	...	...	162
"	43	...	...	"	32	...	...	163
"	44	...	...	"	33	...	...	163
"	45	...	...	"	36	...	...	164
"	47	...	...	"	34	...	...	163
"	48	...	...	"	35	...	...	163
"	50	...	...	"	38	...	...	164
"	51	...	...	"	39	...	...	165
"	52	...	...	"	40	...	...	165
"	53	...	...	"	41	...	...	166
"	54	...	...	"	42	...	...	166
"	55	...	...	"	43	...	...	166
"	56	...	...	"	44	...	...	166
"	57	...	...	"	45	...	...	166
"	59	...	...	"	46	...	...	167
"	60	...	...	"	47	...	...	167
"	61	...	...	"	48	...	...	167
"	62	...	...	"	49	...	...	167
"	63	...	...	"	50	...	...	167
"	65	...	...	"	51	...	...	167
"	66	...	...	"	52	...	...	168
"	67	...	...	"	53	...	...	168
"	68	...	...	"	54	...	...	168
"	69	...	...	"	55	...	...	168
"	72	...	...	"	56	...	...	168
"	73	...	...	"	57	...	...	169
"	74	...	...	"	58	...	...	169
"	75	...	...	"	59	...	...	169
"	76	...	...	"	60	...	...	169
"	77	...	...	"	61	...	...	170
				{ 38 Vic. No. 5 s. 141				89
				Insolvency Rules, 1st October, 1874.				
"	78	...	...	Rule	62	...	...	170
"	79	...	...	"	63	...	...	171
"	80	...	...	"	64	...	...	171
"	81	...	...	"	65	...	...	172
"	82	...	...	"	68	...	...	172
"	83	...	...	"	69	...	...	173
"	84	...	...	"	67	...	...	172
"	85	...	...	"	70	...	...	173
"	86	...	...	"	71	...	...	173
"	87	...	...	"	75	...	...	174
"	88	...	...	"	76	...	...	174
"	89	...	...	"	77	...	...	174
"	90	...	...	"	72	...	...	173
"	91	...	...	"	74	...	...	174
"	93	...	...	"	78	...	...	175
"	94	...	...	"	79	...	...	175
"	95	...	...	"	80	...	...	175
"	97	...	...	"	82	...	...	175

TABULAR ANALYSIS.

xxx

Rules of English Orders.				Corresponding Rules of Queensland Orders or Statute.				Page.
				Insolvency Rules, 1st October, 1874.				
Rule 98	...	...	...	Rule 83	...	...	...	176
" 99	...	...	...	" 84	...	...	...	176
" 100	...	...	...	" 85	...	...	...	176
" 101	...	...	...	" 86	...	...	...	176
" 102	...	...	...	" 87	...	...	...	176
" 103	...	...	...	38 Vic. No. 5 s. 85	...	...	...	44
				Insolvency Rules, 1st October, 1874.				
" 104	...	...	...	Rule 88	...	...	...	176
" 105	...	...	...	" 89	...	...	...	177
" 106	...	...	...	" 90	...	...	...	177
" 107	...	...	...	" 91	...	...	...	177
" 108	...	...	...	" 92	...	...	...	177
" 109	...	...	...	" 93	...	...	...	177
" 110	...	...	...	38 Vic. No. 5 s. 111	...	...	...	66
" 111	...	...	...	Rules 81, 94	...	...	...	175, 178
" 112	...	...	...	Rule 95	...	...	...	178
				38 Vic. No. 5 s. 127	...	...	...	76
				Insolvency Rules, 1st October, 1874.				
" 113	...	...	...	Rule 96	...	...	...	178
" 114	...	...	...	" 97	...	...	...	178
" 115	...	...	...	" 98	...	...	...	178
" 116	...	...	...	" 99	...	...	...	179
" 117	...	...	...	" 100	...	...	...	179
" 118	...	...	...	" 101	...	...	...	179
" 119	...	...	...	" 102	...	...	...	179
" 120	...	...	...	" 103	...	...	...	179
" 121	...	...	...	" 104	...	...	...	180
" 122	...	...	...	" 105	...	...	...	180
" 123	...	...	...	" 106	...	...	...	180
" 124	...	...	...	" 107	...	...	...	181
" 125	...	...	...	" 108	...	...	...	181
" 126	...	...	...	" 109	...	...	...	181
" 127	...	...	...	" 110	...	...	...	181
" 128	...	...	...	" 111	...	...	...	181
" 129	...	...	...	" 112	...	...	...	182
" 130	...	...	...	" 113	...	...	...	182
" 131	...	...	...	" 114	...	...	...	182
" 132	...	...	...	" 115	...	...	...	182
				38 Vic. No. 5 s. 156	...	...	...	96
				Insolvency Rules, 1st October, 1874.				
" 133	...	...	...	" 116	...	...	...	182
" 134	...	...	...	" 117	...	...	...	182
" 135	...	...	...	" 118	...	...	...	182
" 136	...	...	...	" 119	...	...	...	183
" 137	...	...	...	" 120	...	...	...	183
" 138	...	...	...	" 121	...	...	...	184

Rules of English Orders.				Corresponding Rules of Queensland Orders or Statute.				Page.
				Insolvency Rules, 1st October, 1874.				
Rule 139	...	...	...	Rule 122	...	...	...	184
" 142	...	...	...	" 123	...	...	...	184
" 143	...	...	...	" 124	...	...	...	185
" 144	...	...	..	" 125	...	...	...	185
" 145	...	...	...	" 126	...	...	...	185
" 146	...	...	...	" 127	...	...	...	185
" 147	..	...	...	" 128	..	...	...	185
" 148	...	...	...	" 129	...	...	...	185
" 149	...	...	...	" 130	...	...	...	186
" 157	..	...	...	" 132	...	...	...	186
" 158	...	..	...	" 133	..	...	...	187
" 159	...	..	...	" 134	...	...	...	187
" 160	...	...	...	" 135	...	...	...	187
" 161	..	...	...	" 136	...	...	...	187
" 162	...	...	...	" 137	...	...	...	187
" 163	...	...	...	" 138	..	...	...	188
" 164	...	...	...	" 139	...	...	...	188
" 165	...	...	...	" 140	...	...	...	188
" 166	...	...	...	" 141	...	...	...	188
" 167	...	...	...	" 142	...	...	...	188
" 168	...	...	...	" 143	...	...	...	189
" 169	...	...	...	" 144	...	...	...	189
" 170	...	...	..	" 145	...	...	...	189
" 171	...	...	...	" 146	...	...	...	189
" 172	...	...	...	" 147	...	...	...	189
" 173	...	...	...	" 148	...	...	...	190
" 174	...	...	...	" 149	...	...	...	190
" 176	...	...	...	" 150	...	...	...	190
" 177	...	...	...	" 151	...	...	...	190
" 178	...	...	...	" 152	..	...	...	190
" 179	...	...	...	" 153	...	...	...	191
" 180	...	...	...	" 154	...	...	...	191
" 181	...	...	...	" 155	...	...	...	191
" 182	...	...	...	" 156	...	...	...	191
" 183	..	...	...	" 157	...	...	...	192
" 184	..	...	...	" 158	...	...	...	192
" 185	...	...	...	" 159	...	...	...	192
" 187	...	...	...	" 160	...	...	...	192
" 189	...	...	...	" 161	...	...	...	193
" 190	...	...	...	" 162	...	...	...	193
" 203	...	...	...	" 164	...	...	...	193
" 205	...	...	...	" 165	...	...	...	193
" 229	...	...	...	" 168	...	...	...	194
" 234	...	...	...	" 170	...	...	...	194
" 235	...	...	...	" 171	...	...	...	195
" 237	...	..	...	" 172	...	...	...	195
" 238	...	...	...	" 173	...	...	...	195
" 239	...	...	...	" 174	...	...	...	195
" 240	...	...	...	" 175	...	...	...	195
" 241	...	...	..	" 176	...	...	...	196
" 242	...	...	...	" 177	...	...	...	196
" 243	...	...	..	" 178	...	...	...	196

Rules of English Orders.				Corresponding Rules of Queensland Orders or Statute.				Page.
				Insolvency Rules, 1st October, 1874.				
Rule 244	...	...	...	Rule 179	...	...	...	196
" 245	...	...	...	" 180	...	...	...	196
" 246	...	...	...	" 181	...	...	...	196
" 247	...	...	...	" 182	...	...	...	196
" 248	...	...	...	" 183	...	...	...	197
" 249	...	...	...	" 184	...	...	...	197
" 250	...	...	...	" 185	...	...	...	197
" 251	...	...	...	" 186	...	...	...	198
" 252	...	...	...	" 187	...	...	...	198
" 254	...	...	...	" 188	...	...	...	198
" 255	...	...	...	" 189	...	...	...	199
" 256	...	...	...	" 190	...	...	...	199
" 257	...	...	...	" 191	...	...	...	199
" 258	...	...	...	" 192	...	...	...	199
" 259	...	...	...	" 193	...	...	...	199
" 260	...	...	...	" 194	...	...	...	200
" 261	...	...	...	" 195	...	...	...	200
" 262	...	...	...	" 196	...	...	...	201
" 263	...	...	...	" 197	...	...	...	201
" 264	...	...	...	" 198	...	...	...	202
" 265	...	...	...	" 199	...	...	...	202
" 266	...	...	...	" 200	...	...	...	202
" 267	...	...	...	" 201	...	...	...	202
" 268	...	...	...	" 202	...	...	...	202
" 269	...	...	...	" 203	...	...	...	203
" 270	...	...	...	" 204	...	...	...	203
" 271	...	...	...	" 205	...	...	...	203
" 272	...	...	...	" 206	...	...	...	203
" 273	...	...	...	" 207	...	...	...	203
" 274	...	...	...	" 208	...	...	...	204
" 275	...	...	...	" 209	...	...	...	204
" 276	...	...	...	" 210	...	...	...	205
" 277	...	...	...	" 211	...	...	...	205
" 278	...	...	...	" 212	...	...	...	205
" 279	...	...	...	" 213	...	...	...	205
" 280	...	...	...	" 214	...	...	...	206
" 281	...	...	...	" 215	...	...	...	206
" 282	...	...	...	" 216	...	...	...	206
" 283	...	...	...	" 217	...	...	...	207
" 284	...	...	...	" 218	...	...	...	207
" 285	...	...	...	" 219	...	...	...	207
" 286	...	...	...	" 220	...	...	...	208
" 287	...	...	...	" 221	...	...	...	209
" 288	...	...	...	" 222	...	...	...	209
" 289	...	...	...	" 223	...	...	...	209
" 290	...	...	...	" 224	...	...	...	210
" 291	...	...	...	" 225	...	...	...	210
" 292	...	...	...	" 226	...	...	...	210
" 293	...	...	...	" 227	...	...	...	210
" 294	...	...	...	" 228	...	...	...	210
" 295	...	...	...	" 229	...	...	...	211
" 296	...	...	...	" 230	...	...	...	211

Rules of English Orders.				Corresponding Rules of Queensland Orders or Statute.				Page.
				Insolvency Rules, 1st October, 1874.				
Rule 297	..	...	...	Rule 231	...	...	...	211
" 298	...	...	...	" 232	...	...	...	211
" 299	...	...	...	" 233	..	...	...	212
" 300	...	...	...	" 234	...	...	...	212
" 301	...	...	...	" 235	...	...	...	212
" 302	...	...	...	" 236	...	...	...	212
" 303	...	...	...	" 237	...	...	...	213
" 304	...	...	...	" 238	...	...	...	213
" 305	...	...	...	" 239	...	...	...	213
" 306	...	...	...	" 240	...	...	...	213
" 307	..	...	...	" 241	...	...	...	213
" 308	...	...	...	" 242	...	...	...	214
" 309	...	...	...	" 243	...	...	...	214
" 310	...	...	..	" 244	...	...	..	214
" 311	...	...	...	" 245	...	..	...	214
" 312	...	...	...	" 246	...	...	...	214
" 313	...	...	...	" 247	...	..	...	215
" 314	...	...	...	" 248	...	..	...	215
Sched. Form 1	...	...	...	Sched. Form 1	...	...	...	220
" " 2	...	...	...	" " 2	...	...	...	220
" " 3	...	...	...	" " 3	...	...	...	221
" " 4	...	...	...	" " 4	...	...	...	221
" " 8	...	...	...	" " 5	...	...	...	222
" " 9	..	...	...	" " 6	...	...	...	222
" " 13	..	...	...	" " 7	...	...	...	223
" " 15	...	...	...	" " 8	...	..	...	223
" " 16	...	...	...	" " 9	...	...	...	224
" " 17	...	...	...	" " 10	...	...	...	224
" " 18	...	...	...	" " 11	..	...	...	224
" " 19	...	...	...	" " 12	...	...	...	225
" " 20	...	...	...	" " 13	...	...	...	226
" " 21	...	...	...	" " 14	...	...	...	226
" " 22	...	...	...	" " 32	...	...	...	236
" " 23	...	...	...	" " 15	...	...	...	227
" " 24	...	...	...	" " 16	...	...	...	227
" " 25	...	...	...	" " 17	...	...	...	227
" " 26	...	...	...	" " 18	...	...	...	228
" " 27	...	...	..	" " 19	...	...	...	228
" " 30	...	...	...	" " 20	...	...	...	228
" " 31	...	...	...	" " 21	...	...	...	229
" " 32	...	...	...	" " 22	...	...	...	229
" " 33	...	...	...	" " 23	...	...	...	230
" " 34	...	...	...	" " 24	...	...	...	230
" " 35	...	...	...	" " 25	...	...	...	230
" " 36	...	...	...	" " 26	..	...	...	231
" " 37	...	...	...	" " 33	...	...	...	236
" " 38	...	...	...	" " 27	...	...	...	232
" " 39	...	...	...	" " 28	...	...	...	232
" " 40	...	...	...	" " 29	...	...	...	235
" " 41	...	...	...	" " 30	...	...	...	236
" " 42	...	...	...	" " 31	...	...	...	236
" " 44	...	...	...	" " 35	...	...	...	237

Rules of English Orders.			Corresponding Rules of Queensland Orders or Statute.			Page.
			Insolvency Rules, 1st October, 1874.			
Sched. Form 45	...	...	Sched. Form 36	...	...	237
" " 46	...	...	" " 37	...	...	238
" " 47	...	...	" " 38	...	...	238
" " 48	...	...	" " 39	...	...	238
" " 49	...	...	" " 40	...	...	239
" " 50	...	...	" " 41	...	...	239
" " 51	...	...	" " 42	...	...	240
" " 52	...	...	" " 43	...	...	240
" " 53	...	...	" " 44	...	...	240
" " 54	...	...	" " 45	...	...	241
" " 55	...	...	" " 46	...	...	241
" " 56	...	...	" " 47	...	...	241
" " 57	...	...	" " 48	...	...	242
" " 58	...	...	" " 49	...	...	242
" " 59	...	...	" " 50	...	...	242
" " 60	...	...	" " 51	...	...	243
" " 61	...	...	" " 52	...	...	243
" " 64	...	...	" " 53	...	...	243
" " 66	...	...	" " 54	...	...	244
" " 67	...	...	" " 55	...	...	244
" " 68	...	...	" " 56	...	...	245
" " 69	...	...	" " 57	...	...	245
" " 70	...	...	" " 58	...	...	245
" " 71	...	...	" " 59	...	...	245
" " 72	...	...	" " 60	...	...	246
" " 73	...	...	" " 61	...	...	246
" " 74	...	...	" " 62	...	...	247
" " 76	...	...	" " 63	...	...	248
" " 77	...	...	" " 64	...	...	248
" " 78	...	...	" " 65	...	...	248
" " 79	...	...	" " 66	...	...	249
" " 80	...	...	" " 67	...	...	249
" " 81	...	...	" " 68	...	...	249
" " 82	...	...	" " 69	...	...	250
" " 83	...	...	" " 70	...	...	250
" " 84	...	...	" " 71	...	...	250
" " 85	...	...	" " 72	...	...	251
" " 86	...	...	" " 73	...	...	252
" " 87	...	...	" " 74	...	...	252
" " 88	...	...	" " 75	...	...	252
" " 89	...	...	" " 76	...	...	253
" " 90	...	...	" " 77	...	...	253
" " 91	...	...	" " 78	...	...	253
" " 92	...	...	" " 79	...	...	254
" " 93	...	...	" " 80	...	...	254
" " 94	...	...	" " 81	...	...	255
" " 95	...	...	" " 82	...	...	255
" " 96	...	...	" " 83	...	...	255
" " 101	...	...	" " 84	...	...	256
" " 102	...	...	" " 85	...	...	256
" " 103	...	...	" " 85	...	...	257
" " 104	...	...	" " 86	...	...	257

Rules of English Orders.				Corresponding Rules of Queensland Orders or Statute.				Page.
				Insolvency Rules, 1st October, 1874.				
Sched. Form	105	...	...	Sched. Form	87	...	...	258
"	106	...	...	"	88	...	...	259
"	107	...	...	"	89	...	...	260
"	108	...	...	"	90	...	...	260
"	109	...	...	"	91	...	...	261
"	110	...	...	"	92	...	...	262
"	111	...	...	"	93	...	...	262
"	112	...	...	"	94	...	...	262
"	113	...	...	"	95	...	...	263
"	114	...	...	"	96	...	...	263
"	115	...	...	"	97	...	...	264
"	116	...	...	"	98	...	...	264
"	117	...	...	"	99	...	...	265
"	118	...	...	"	100	...	...	265
"	119	...	...	"	101	...	...	266
"	120	...	...	"	102	...	...	266
"	121	...	...	"	103	...	...	266
"	122	...	...	"	104	...	...	267
"	123	...	...	"	105	...	...	267
"	124	...	...	"	106	...	...	267
"	125	...	...	"	107	...	...	268
"	126	...	...	"	108	...	...	268
"	129	...	...	"	109	...	...	268
"	130	...	...	"	110	...	...	269
"	131	...	...	"	111	...	...	269
"	132	...	...	"	112	...	...	270
"	134	...	...	"	113	...	...	270
"	135	...	...	"	114	...	...	270
"	136	...	...	"	115	...	...	270

INTRODUCTION.

THE insolvency law has been described as having been slowly evolved from the criminal code in answer to the necessities of a widely-spread industrial life; and the objects which it seeks to attain are—

1. The enforcement of a complete discovery of the property of the debtor.
2. Its equitable distribution amongst his creditors.
3. The release of the debtor from the claims of his creditors, and protection to his person; and,
4. The punishment of the debtor, if guilty of fraud.

It was considered by the parliament of this colony that *The Insolvency Act of 1864*, which was an adaptation of the English Bankruptcy Act of 1861, had failed to deal satisfactorily with several, if not all, of these subjects. It was accordingly repealed and superseded by the statute 38 Vic., No. 5, entitled *The Insolvency Act of 1874*, which came into operation on the 1st of October in that year. Whilst re-enacting a number of the repealed provisions considered to be valuable, the statute adopts many of the English Bankruptcy Act of 1869, which was passed in lieu of that of 1861, as well as portions of other enactments. The law and practice under it may be now fairly considered as settled by judicial interpretation, and it is hoped that a compilation such as the present may prove useful, not only to the profession but to the mercantile community, whose interests are so vitally affected by the administration of this branch of the law.

In introducing the Act to the reader it may be convenient to give a summary of its provisions under the following heads:—

The constitution and powers of the court in insolvency, as now established.

By what acts a debtor may become liable to be adjudicated insolvent, and the proceedings by which the order is obtained.

The persons in whom his property vests on adjudication; their duties and liabilities.

What property vests in them, and to what extent the acts of the debtor are binding on them.

The proof of debts by creditors, and their rights generally.

The discharge of the debtor.

The arrangements between the debtor and his creditors.

The offences against the insolvency law.

It is therefore proposed to consider—

(1.) *The constitution and powers of the court.*

The Supreme Court of Queensland is declared to be primarily the court of insolvency, and also the court of appeal, and by it all adjudications of insolvency *must* be made. Its powers, except those vested in it as a court of appeal, may, however, be exercised by any one of its judges, and its proceedings are recorded by the principal registrar at the principal registry. By the interpretation clause these words are defined to mean *the registrar of the Supreme Court at Brisbane, or any other place or places at which there shall be a registrar of that court, and the office of such registrar.*

For purposes of local convenience and administration, the Governor in Council is empowered to appoint any district court to be a district court in insolvency, and any police magistrate or clerk of petty sessions to be a district registrar in insolvency, whose

office is to be called the "district registry;" and the judge of such court is to hold his sittings immediately after the ordinary sittings of the court, or at any time, of which notice shall be given, in accordance with the rules. To these courts the Supreme Court may, on the application of the insolvent, or the trustee, or any creditor, refer all or any of the proceedings after adjudication; and for the purposes of such proceedings they are deemed to possess the jurisdiction and powers of the court of insolvency, as declared by the Act.

"The court" may therefore mean the Supreme Court of Queensland, exercising its jurisdiction collectively or by one of its judges, or the judge of a district court to whom that jurisdiction has been, *after adjudication*, either wholly or partially delegated. Any judge may sit in chambers, and whether so sitting or not, may exercise all the powers of a judge in equity. Whilst, however, the statute concedes to every court in insolvency the right of reviewing its orders, it reserves to the Supreme Court the right of appeal, except in cases where the proof of debt or the property involved does not amount to £30.

The Supreme Court is to adjudicate on all petitions of insolvency and all debtors' summonses, and may order the arrest of absconding debtors whilst proceedings for adjudication are pending against them, as well as the seizure of books, papers, and property in their possession, and may also, before adjudication, summon to attend before itself or any district court in insolvency, or police magistrate, the debtor, or any person capable of giving any information concerning any act of insolvency, on pain of arrest and punishment in the event of refusal to attend. By it the appointment of the trustee nominated by the creditors is to be confirmed, and his continuance in office regulated. In it is also vested a general superintendence of the realisation and disposition of the estate, and the power of compelling discovery of property, and of granting, suspending, or refusing certificates, as well as an extensive criminal jurisdiction. Under the foregoing heads are comprehended a multitude of subsidiary provisions,

which, in this summary view of the subject, it is unnecessary to detail. Such are briefly the powers of the court.

- (2.) *By what acts a debtor may become liable to be adjudicated insolvent, and the proceedings by which the order is obtained.*

The most direct and simple act of insolvency is the filing of a petition by the debtor himself; and in the case of partnerships, the petition may be presented by the majority of the members "who at the time of presenting it are usually resident within the colony." The acts on which *creditors* can found a petition for the adjudication of the debtor are specified in section 44; but no advantage can be taken of any of them unless proceedings be instituted within six months from their occurrence. The amount and nature of the petitioning creditors' debt must also be in accordance with the provisions of sections 46 and 47. Certain acts *primâ facie* innocent are deemed acts of insolvency, if committed by the debtor with intent to defeat or delay his creditors. These are—departing from the colony, or being out of the colony, remaining absent from it; or departing from his dwelling house, or otherwise absenting himself; or beginning to keep house. The other acts of which a creditor can take advantage are:—

The execution by the debtor of a conveyance or assignment of his property to a trustee for the benefit of his creditors.

The making by him of a fraudulent disposition of his property, or his execution of a fraudulent warrant of attorney or *cognovit actionem*, or the giving of a fraudulent preference to a creditor.

The filing by the debtor of a declaration of inability to pay his debts, or his presentation of a petition for adjudication of insolvency against himself.

Failure to satisfy execution process issued against the debtor to the amount of fifty pounds within four days after seizure.

Failure to satisfy the sentence, judgment, or decree of any competent court, or to point out sufficient disposable property to satisfy it.

Preferring a petitioning creditor.

Neglecting to satisfy a debtor's summons issued at the instance of the petitioning creditor.

Failure by the debtor to present a petition of insolvency against himself within forty-eight hours after a meeting of his creditors, at which he has agreed to do so, or failure within a like period to present a petition on the request of a majority of his creditors present at any meeting at which he has admitted his inability to meet his engagements, or has offered less than twenty shillings in the pound.

The adjudication of the debtor as bankrupt or insolvent in any British court out of the colony, or the presentation of any petition in such court for that purpose.

Sections 48 and 49 form a very important feature of the Act, by supplying a proceeding designated a *debtor's summons*, which requires the debtor to pay or compound, on pain of being declared to have committed an act of insolvency in respect of which a petition may be presented against him.

The proceedings for adjudication, whether by debtor or creditor, are by petition; in the case of the debtor, it must be attested by a justice, commissioner, or registrar (see form in section 41) The petition of a creditor must be verified by affidavit, which may be made by the member of a firm or by an authorised officer of a company or corporation; in the case of a creditor absent from the colony, the oath of his attorney or agent is sufficient. Section 51 furnishes comprehensive statements of the grounds applicable to every compulsory sequestration, and the succeeding sections to 65 embrace the formal steps requisite to obtain it.

Any petition may be presented and filed in the principal

registry or any district registry ; if in the latter it must be in duplicate, a duplicate copy authenticated under the seal of the registry, with the day and hour of presentation marked on it, being at once transmitted to the principal registry. If required by the petitioner, the district registrar is to transmit it by telegraph. Should there be reason for believing that the debtor intends to avoid service of the petition by quitting the colony or his place of residence, he may be arrested (see sections 71 and 72).

In the case of a debtor's petition, adjudication is made on its presentation to the judge, and this must be done within four weeks from the time of its reaching the principal registry. A creditor's petition is adjudicated upon after service of copy and summons on the debtor, and after proof, on the day fixed for hearing, of the debt and act of insolvency (sec. 63), and should the debt be disputed the court may direct the question to be tried (64).

(3.) *The persons in whom the debtor's property vests on adjudication, their duties and liabilities.*

By section 78, the Governor in Council may appoint one or more persons to be an official trustee or trustees, and the official trustee, or such one of the trustees, if more than one, as may be appointed, is to be the principal receiver in insolvency (sec. 81). In every place where there is a district registrar a district receiver is also to be appointed (sec. 81). On the presentation of a petition *by the debtor* in a district registry, the district receiver, and if in the principal registry, the principal receiver, is to take possession of the petitioner's property, and retain it until adjudication has been made or the petition has been dismissed. Every adjudication order must appoint some one of the official trustees to be the official trustee of the estate, and fix a date, not earlier than six days nor later than twenty days thereafter, for holding a general meeting of creditors for the election of a trustee. Until this election takes place the official trustee is to be the

trustee for the purposes of the Act, and immediately on the order of adjudication being made, the property of the insolvent passes to him, and continues vested in him, "*unless and until a trustee is elected*" (sec. 84). It is the duty of the official trustee, on his appointment, to take possession of the insolvent's property, and to cause such of it as may be of a perishable nature to be sold, the residue being preserved until the time for the election of a trustee has elapsed. The general meeting of creditors for the election of a trustee is to be held at the principal registry, or some convenient place near to it, and it is summoned by notice, as provided in section 89. Creditors desirous of voting must first make "preliminary" proof of debt by affidavit before the principal registrar, or any district court judge, police magistrate, commissioner for affidavits, or district registrar, who delivers to the creditor a certificate of the fact. The certificate is filed in the principal registry, or in the district registry, in which latter case the district registrar is to transmit a copy by telegraph to the principal registry, and it entitles the creditor to vote to the amount of the debt stated in it.

The creditors assembled at the meeting may then proceed to the election of "some fit* person resident in Queensland, whether a creditor or not," as trustee, fixing the remuneration for his duties and the security which he is to give, and may appoint a committee of inspection of not more than five, being creditors, for the purpose of superintending his management of the estate. They may also give directions as to the manner in which the trustee is to administer the property. If they think fit they may leave the appointment of the trustee to the committee of management. Section 93 embodies the requirements for the conduct of business at the meeting and for regulating the right of voting, which may be by proxy, and proxies may be transmitted by telegraph from a district registry. More than one trustee may be appointed; but in the event of plurality, the creditors must declare whether any of the acts which a trustee

* For instances of removal of trustees as not being fit, see p. 56.

may do are to be done by all or any one or more of the trustees they have elected.

The election is then reported to the court, which grants its certificate of the fact, and thereupon the property of the insolvent is divested from the official trustee and passes to the appointed trustee. If there are several trustees, they become joint tenants of the estate. There are ample provisions in section 101 for the filling up of vacancies in the office of trustee, for his suspension or removal, and for the devolution of property to his successors, as well as for regulating the status of the members of the committee of inspection. By the same section the certificate of the appointment of the trustee has the effect of a conveyance of the debtor's property, and he may sue and be sued by his official name of trustee of the property of the insolvent whom he represents, and may in all respects bind his successors in office.

By section 123, the trustee is to obey the directions given by resolution of the creditors appointed at any general meeting, or by the committee of inspection, in matters having reference to the administration of the insolvent's property; and the directions of creditors in general meeting may over-ride any directions of the committee of inspection. Where such a committee has been appointed, the trustee must call meetings of it (section 123). Subject to the provisions of the Act and the directions of the creditors, the trustee is to exercise his own discretion in the management and distribution of the estate, and to summon general meetings of the creditors for the purpose of ascertaining their wishes; and the provisions of the Act in regard to the first meeting are, with the exceptions pointed out in section 128, to be deemed to apply to these meetings. He is also deemed to occupy the position of a receiver in equity, and may at any time apply, on notice to parties interested, to the court for its advice and direction. He is to take possession of the deeds, books, documents, and property of the debtor as soon as possible, and to keep books of account as prescribed by the rules, and is to receive and decide on proof of debts. He is empowered to carry on the debtor's

business for the purpose of winding it up, and may execute any deeds necessary for dealing with the estate, and realise the latter by public auction or private contract. He may also prove claims in any insolvency in which the debtor he represents is a creditor, and may employ solicitors or agents. By sections 130 and 131, he may also disclaim the ownership of any onerous property or covenants. With the sanction of the committee of inspection, he may pledge the debtor's property, employ his services, bring or defend actions or suits, refer matters to arbitration, make compromises, divide property not advantageously realisable amongst creditors, and employ the services of shorthand writers. The trustee may also, with the sanction of a special resolution of the creditors assembled at any meeting convened according to the rules, accept any composition offered by the debtor, or assent to any general scheme of settlement of his affairs, and with or without a condition that the order of adjudication is to be annulled, but subject to the approval of the court, testified by the judge signing the instrument containing the terms of the composition or scheme, or embodying the terms in an order of the court, and the provisions of the arrangement may be enforced by summary process, disobedience being considered a contempt (section 134). He may also apply for an order for the sale of land of the debtor, subject to equitable mortgage, and if the debtor has made any conveyance, assurance, delivery, deposit, or pledge of any deeds, writings, goods or chattels subject to a condition for redemption, or re-delivery on payment at a future day, which has not arrived at the time of presenting the petition, he may make payment or tender of the money, and shall be thereupon entitled to receive and recover such deeds and property (sections 137 and 138). He may also, with the consent of the committee of inspection, within thirty days after the tendering of proof, require a secured creditor to give up his security on payment of the specified value. He is also empowered to transfer stock, shares in ships, or any other property transferable in the books of any company, office, or person, and may recover choses in action in his own name. It is also his duty from time to

time, when determined by the committee of inspection, to declare and distribute dividends amongst the creditors who have proved, and if he has not declared a dividend for six months he is to summon a meeting of the creditors and explain to them his reasons for not declaring it. When he has converted into money the property of the debtor, or so much of it as can in the opinion of himself and the committee be realised without needlessly protracting the insolvency, he is to declare a final dividend; if he refuses to pay any dividend the court may order him to pay it with interest. In order to ensure his honesty, he is required to pay all moneys into the bank named by the creditors or the court, and if he retains, without sufficient cause, any sum of money exceeding fifty pounds for more than ten days, he is liable to pay interest at the rate of twenty per cent. per annum on the excess, to be superseded in his office without claim for remuneration, and to be charged with any expenses to which the creditors may be put by reason or in consequence of his dismissal. He is liable to be removed from office on the mere motion of the creditors by special resolution at a meeting specially called for the purpose, and he ceases to be a trustee on becoming insolvent, or residing out of the colony. He must also furnish to the accountant in insolvency a statement, not less than once in every six months, containing the particulars and in the form required by the rules, and the accountant may call him to account for misfeasance, and examine him before the court, and investigate his books and vouchers. Sections 166, 197, 198, 199, and 200, contain provisions for the close of the insolvency, the release of the trustee, and the disposal of unclaimed dividends.

Before concluding this head, it will be convenient to reiterate—

That the official trustee, on the order of adjudication being made, is vested with the property of the debtor until the election of a trustee or trustees by the creditors.

That on such election the property passes to the trustee or trustees so elected.

That if no trustee is elected, the official trustee continues to be the trustee of the estate.

That the creditors may appoint a committee of management to superintend the administration of the estate by the trustee.

Certain special powers have been enumerated which the trustee may exercise with the concurrence of the committee. It only remains to add that where no committee has been appointed, the requisite authority may be obtained from the court, and the court or the creditors may, even when the committee exists, dispense with the necessity for its concurrence by order or resolution (section 101).

(4). *What property vests in the trustee or trustees, and to what extent the acts of the debtor are binding on him or them.*

It is declared by section 87 that, with the exception of property held by the debtor as a trustee, and of his tools of trade, and wearing apparel, &c., of himself and family, of no greater aggregate value than twenty pounds, all such property as may belong to or be vested in him at the commencement of the insolvency, or may be acquired by or devolve on him during its continuance, becomes divisible amongst his creditors. The term property also comprises the capacity to exercise all such powers over property as might have been exercised by the debtor, and includes all goods and chattels at the commencement of the insolvency, in the possession, order, or disposition of the debtor by the consent and permission of the true owner; of which goods and chattels the debtor is reputed owner, or of which he has taken on himself the sale or disposition as owner. But things in action, other than debts due to him in his business are not goods and chattels within the meaning of this provision. Nor does it invalidate liens on wool or crops, mortgages of sheep or cattle under the *Mercantile Act of 1867*, securities by way of mortgage over machinery in the debtor's possession, for the purpose of being used in his business, or bills of sale registered before the 1st of October, 1874. The debtor may

continue in his own name and for his own benefit any action commenced by him before adjudication for any personal injury or wrong done to himself or to any of his family; but the court may nevertheless direct payment to the trustee of the whole or any part of the sum recovered. By section 102, where the property of any person has been taken in execution, in respect of a sum of not less than fifty pounds, and sold, the sheriff, bailiff, or other officer is bound to retain the proceeds of sale in his hands for a period of fourteen days, and on notice of the filing of an insolvency petition against the debtor within that period shall hold the proceeds, less the costs and expenses of the execution creditor in trust to pay the same to the trustee, if the debtor is adjudicated insolvent. The trustee is also to receive such part of the pay or emoluments of any insolvent, civil servant, or parliamentary pensioner as the court may think just, and where the debtor is in the receipt of a salary or income from any other source, the like order may be made. If any moneys or securities are in the possession of any banker, attorney, or agent of an insolvent, they are to be delivered up, unless a lien exists; but no person as against the trustee is entitled to withhold possession of any books of account, papers, or writings relating to the estate, or to claim any lien in respect of them.

Certain transactions of the debtor are also declared to be void as against the trustee. (See sections 105 to 109 inclusive.) These comprise—Such dealings with property as would, under the statute, be deemed acts of insolvency.—Fraudulent preferences, whether by conveyance, assignment, gift, delivery, or judicial proceeding, if a petition for adjudication be presented within six months from the date of the transaction, and whether made under pressure of a creditor or not.—Conveyances, &c., or dealings with property by debtors unable to pay their debts as they become due from their own moneys, and not being for a reasonable and sufficient consideration given at the time, if petition be similarly presented.—Conveyances, &c., or dealings with property by debtors so circumstanced, the effect of which is to defeat or delay creditors, if petition be similarly presented,

unless the party alleging the validity of any such transaction can prove its *bond fides*, the onus of proof being on him.— Voluntary settlements made by debtors, and not being of property accrued to them after marriage in right of their wives. Such a settlement is absolutely void in the event of insolvency within two years from its date, whatever the circumstances of the debtor may then have been, and is also void within three years, unless the parties claiming under it can prove that at their date the debtor was able to pay his debts without having recourse to the property which he has settled.

By section 74 the insolvency of a debtor, whether on his own or a creditor's petition, is deemed to have relation back to the time of the act of insolvency being completed, on which the order is made adjudging him to be insolvent. Such a provision, if standing alone and without qualification, would destroy all confidence in business, and certain acts and transactions of the debtor in favor of or with innocent parties, are accordingly protected as against his trustee. These are:—

Dispositions or contracts with respect to the disposition of property by conveyance, payment, or other dealing made by insolvents in good faith and for valuable consideration before the date of the order of adjudication with any persons not having notice of an act of insolvency.

Executions or attachments executed in good faith by seizure and sale before the date of the order of adjudication, the creditor not having notice of an act of insolvency; but the validity of these executions is of course subject to the provisions of the Act relating to the proceeds of the sale and seizure of goods before noted.

Payments made in good faith and for value received to insolvents before the date of the order of adjudication by a person not having notice of any act of insolvency.

Payments or deliveries of moneys or goods belonging to

insolvents, made to them by depositories before the date of the adjudication order without notice of any act of insolvency.

Contracts or dealings with insolvents made in good faith and for valuable consideration before the date of the adjudication order by persons not having at the time notice of any act of insolvency.

(5). *The proof of debts by creditors, and their rights generally.*

As before pointed out, a creditor must prove his debt preliminarily, and obtain a certificate to entitle him to vote at the general meeting called for the election of trustee and for other business. Subsequently he must prove his debt in due form by delivering his proof to the trustee, who has authority to decide upon it, and from whose decision he has an appeal. Precise directions are contained in the rules for determining the mode and form of proof. All debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the order are provable, but not demands in the nature of unliquidated damages arising otherwise than by contract (sec. 140.) Contingent liabilities may also be estimated, and a rebate at the rate prescribed by the rules is to be allowed in respect of debts not actually accrued due at the date of adjudication. In the case of rent or payments falling due at stated periods, the creditor may prove for a proportionate part up to the day of adjudication, as if accruing from day to day. The trustee may also allow the same interest as a jury could under the circumstances on any debt. Where there have been mutual dealings, the creditor can only prove for the balance, and a secured creditor, for the amount due to him after realising or giving credit for the value of his security; but on resigning his security, he may prove for the whole debt. In the case of premiums paid by apprentices or clerks, the trustee may assess a sum by way of refund or premium, and pay it out of the estate. All debts proved are, with certain exceptions, payable *pari passu*.

These exceptions, which take priority, and are preferential, are :—

Local rates due at the date of the order, and having become due within twelve months.

All rates and assessments assessed on the debtor up to the first of January and first of July next before the order, not exceeding in the whole one year's assessment.

Wages or salary of any clerk, servant, laborer, or workman for not more than three months, and not exceeding fifty pounds, such wages or salary being claimed in respect of the three months immediately preceding the order.

Rent, not exceeding three months, no landlord being at liberty to distrain after an order of adjudication, or after the presentation of a petition by the debtor.

Such being a short summary of the debts which may be proved, and in respect of which dividends may be paid, it only remains to add that the present statute places to all intents and purposes the immediate dealing with the estate in the hands of the creditors. The elected trustee, who is the representative of the estate, is their executive officer, for he is subordinate to their instructions, and may be removed by their vote. They may at the first meeting give directions as to the manner in which the property of the debtor is to be administered by him, and it is his duty to conform to them, unless otherwise ordered by the court. As already stated, he must also in the administration and distribution of the property, have regard to any instructions given by resolution at any general meeting or by the committee of inspection. [Sec. 123]. The statute and rules give full directions as to the holding and constitution of their meetings, which need not be here detailed.

(6.) *The discharge of the debtor.*

Assuming that the adjudication has not been annulled by reason of creditors having been settled with (section 134), the

debtor may (by section 167) at any time after he has passed his last examination, or at any earlier time, with the consent of his creditors, apply to the court after the notice prescribed by the rules for a certificate of discharge, and to entitle him to this certificate, he must prove to the satisfaction of the court, that the insolvency has arisen from circumstances for which he cannot justly be held responsible, or that a special resolution of his creditors has been passed to the effect that it has so arisen, and that they desire his certificate to be granted, or that the gross amount realised in the estate is equal to the total amount of proved debts. Supposing any of these conditions to be complied with, the court may, nevertheless, suspend or refuse the certificate, if it appears that the debtor has not surrendered all his property, or that a prosecution in insolvency is pending against him. The last examination referred to is to take place not earlier than one month from the date of the order of adjudication, and is appointed by the court on the application of the trustee or of the debtor, on his failure to apply, notice of the appointment of the meeting being given according to the rules; and the examination may be adjourned for such period as the court may think fit, if the examination and accounts are not satisfactory, or if the insolvent has wilfully disobeyed any order of the court, or if the court thinks an adjournment necessary for any other reason. The court may also direct the last examination to be held before any police magistrate who is also to have the power of adjournment. (Sections 164 and 165).

Certain necessary duties to his creditors are imposed on the debtor by section 122, involving the delivery of a complete statement of his affairs, and his attendance at meetings whenever required; and, in order to obtain a disclosure of his property or dealings he may be examined on oath by the trustee, whose report is read at the certificate sitting.

The insolvent may, moreover, under section 114, be examined at any time after the order of adjudication, on the application of the trustee or any creditor before the court in insolvency or any

other court or any police magistrate. Any court or police magistrate before whom the insolvent or any other person is ordered to attend, is called the examining court, and the insolvent must answer all questions whether tending to criminate or not. Whether any application has been made under section 167 or not, the court may, on the application of a debtor who has not obtained his certificate, grant it to him at the expiration of twelve months from the date of adjudication, with the assent in writing of a majority in number of the creditors, whose debts amount to £10 and upwards, who have proved in the estate, or at the expiration of two years without the consent of any creditor. Notice of the meeting must be given in accordance with the rules, and the debtor must make oath that he has made a full and fair discovery of his estate, and is not in collusion with any creditor. The court, may still, however, withhold the certificate, or suspend it for any period (section 168). By section 169, at the expiration of three years from the date of the order of adjudication, an insolvent who has not obtained a certificate of discharge may, with the consent in writing of a majority of creditors, whose debts amount to £10 and upwards, who have proved, apply to the court, after the notice prescribed by the rules, for a certificate; and on proof of the consent and of its not being collusive, the court shall grant the certificate, provided the insolvent make oath that he has made a full and fair discovery of his estate. If on any application for a certificate, the court is of opinion that it ought not to be granted absolutely, it may grant a certificate subject to any condition touching any salary or income, or any other acquired property. The certificate does not release the insolvent from liabilities incurred by fraud or breach of trust, nor from any liability due by him as trustee of an insolvent estate, nor from debts due to the Crown, or from breaches of the revenue laws, or in respect of bail bonds entered into for the appearance of any person prosecuted for any offence under those laws.

Section 176 defines the status of an undischarged insolvent,

and declares the consequences ensuing after the close of his insolvency.

(7.) *The arrangements between a debtor and his creditors.*

These are either by way of liquidation by arrangement or by composition.

Sections 202 and 203 contain directions for carrying out the former. The principal steps defined by the statute are, the summoning of a meeting by the debtor at which the creditors may resolve, by special resolution, that the affairs of the debtor be liquidated; the appointment of a trustee at this or a subsequent meeting, with or without a committee of inspection, and the presentation of the resolution to the principal registrar and its registration by him, on which latter event the liquidation by arrangement shall be deemed to have commenced as from the date of the appointment of trustee. The debtor must be present at the meeting, unless prevented by sickness or other cause satisfactory to the meeting, and must answer enquires and produce to the meeting a statement showing the whole of his assets and debts, with the names and addresses of his creditors, and this statement is also registered with the resolution. From the date of appointment, all the property of the debtor vests in the trustee, who occupies the same position and possesses the same powers in relation to the estate as a trustee in insolvency. The debtor is discharged and the trustee released by resolution of the creditors, and on the report of the discharge to the principal registrar, the latter grants his certificate which operates as a certificate of discharge in insolvency. Where no committee of inspection is appointed in cases of arrangement, the trustee may act on his own discretion in matters where he would otherwise have been bound to refer to the committee.

In the event of difficulties arising in the course of the arrangement, the court may, on petition, adjudge the debtor insolvent.

Composition with creditors is dealt with by section 204, which provides that the creditors of a debtor unable to pay his debts

may, without any proceedings in insolvency, by an extraordinary resolution resolve that a composition shall be accepted in satisfaction of the debts of the debtor. This resolution is one which has been passed by a majority in number and three-fourths in value of the creditors assembled at a general meeting to be held as prescribed by the rules, and confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting, of which notice has been given according to the rules. The debtor, unless prevented by sickness or satisfactory cause, is to be present at both meetings for the purpose of answering enquiries; and a statement of his affairs similar to that before indicated in reference to a debtor seeking arrangement, must be produced. The resolution and statements are then sent to the registrar for registration, but until registration the resolution is of no validity. Before the registration, the debtor must make oath that he has disclosed all his assets and liabilities and the names of his creditors and the amount of their debts, and that there is no collusion between himself and any creditor. This oath is to be registered with the resolution. Certain provisions have also been enacted for varying the provisions of any composition and enforcing such provisions, and for the application of creditors to the court, and the registration of an extraordinary resolution of creditors by the registrar is conclusive evidence of the passing of the resolution until set aside by the court on the application of any creditor. The court may also, if difficulties arise, adjudicate the debtor insolvent.

Elaborate rules have been framed for giving effect to these enactments, and the proceedings are instituted by the debtor himself by petition and affidavit.

(8.) *Offences against the Act.*

A debtor adjudicated insolvent, or whose affairs are liquidated by arrangement, absconding with property from the colony to the value of £20 or upwards within four months before the presentation of the petition, or commencement of the liquidation, is guilty

of felony, and is liable to imprisonment for any term not exceeding three years, with or without hard labour, and is guilty of a misdemeanor, with the same punishment for the following offences:—

For failure to discover property.

For failure to deliver up property.

For failure to deliver up books, papers, &c.

For concealment of property to the value of £10 and upwards after presentation of petition for adjudication or commencement of liquidation, or within four months next before either.

If after or within a similar period he fraudulently removes any part of his property to a like amount.

If he makes any material omission in any statement relating to his affairs.

If knowing or believing that a false debt has been proved he fails to inform the trustee of it for a month.

If he prevents the production of books or documents after the presentation of the petition or the commencement of the liquidation.

If after the like presentation, or commencement, or within four months next before, he conceals, destroys, mutilates, or falsifies books or papers, or is a party thereto.

If after, or during the like period, he makes or is a party to making false entries.

If after, or during the like period, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission in any document relating to his affairs.

If after, or within the like period, or at any meeting within the same period, he attempts to account for any part of his property by fictitious losses or expenses.

If within the like period he has obtained property by false representations and has not paid for the same.

If within the like period he has obtained property or credit under the false pretence of carrying on trade and has not paid for the same.

If within the like period he has pawned, pledged, or disposed of otherwise than in the ordinary way of business any property obtained on credit and not paid for.

If he is guilty of any false representation or fraud for the purpose of obtaining his creditors' consent to any agreement with reference to his affairs, his insolvency, or liquidation.

If he has omitted to keep proper books of account.

Section 208 declares certain offences to be misdemeanors involving imprisonment not exceeding one year. These are:—

Obtaining credit under false pretences or other fraud when incurring any debt or liability.

Making any gift, delivery, transfer, or charge on property with intent to defraud.

Concealing or removing property since or within two months before the date of any unsatisfied judgment, with intent to defraud.

In all the before-specified offences, the existence or not of a fraudulent intent is the principal question to be decided by the jury.

In sections 209 to 213 (inclusive) are contained provisions for the punishment of persons proving false debts, making false declarations or affidavits, concealing or embezzling the insolvent's property, or receiving it with intent to defraud, obstructing the officers of the court, or inserting false advertisements.

The court may commit the insolvent for trial summarily for offences against the Act or for perjury, or may order a prosecution on the report of the trustee or on application by any creditor or member of committee. Offences under the Act are within the jurisdiction of district courts.

ERRATA.

At page 160, rule 24, second last line, between "as" and "thinks" read
"it" instead of "he."

At page 177, rule 91, before "meeting" insert "first."

At page 180, 4th line, for "creditors" read "creditor."

At page 191, rule 156, between "income" and "the" read "of" instead
of "or."



THE INSOLVENCY ACT OF 1874.

38 VICTORIA No. 5.

An Act to Provide for the Distribution of the Estates of Insolvent Debtors amongst their Creditors, and their Release from their Debts, and for the Punishment of Fraudulent Debtors, and for other purposes.

[Assented to 8th July, 1874.]

WHEREAS it is expedient to amend the law 38 Vic. No. 5. relating to Insolvency and to fraudulent s. 1. debtors: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. This Act is divided into twelve parts, that is to Division of Act. say—

PART I.—Preliminary—Sections 2 to 7.

PART II.—Constitution and Powers of Court and Practice—Sections 8 to 39.

PART III.—Debtors' Petitions—Sections 40 to 43.

PART IV.—Creditors' Petitions—Sections 44 to 73.

B

38 Vic. No. 5.
ss. 2-4.

PART V.—Consequences of Adjudication—Custody and Vesting of Property—Sections 74 to 121.

PART VI.—Administration of Property—Sections 122 to 163.

PART VII.—Close of Insolvency and Certificate—Sections 164 to 176.

PART VIII.—Supplemental Provisions—Sections 177 to 201.

PART IX.—Liquidation by Arrangement—Sections 202 and 203.

PART X.—Composition with Creditors—Sections 204 and 205.

PART XI.—Offences—Sections 206 to 221.

PART XII.—Abolition of Offices—Disposal of Records, &c.—Sections 222 to 225.

PART I.—PRELIMINARY.

Short title. 2. This Act may be cited as *The Insolvency Act of 1874*.

Commencement. 3. This Act shall come into operation on the first day of October one thousand eight hundred and seventy-four which date is hereinafter referred to as the commencement of this Act.

Interpretation.
 32 and 33 Vic.,
 c. 71, s. 4.

4. In this Act if not inconsistent with the context the following terms have the meanings hereinafter respectively assigned to them that is to say—

“District Court” shall mean a court holden under and by virtue of *The District Courts Act of 1867* or any other Acts relating to district courts.

“The Court” shall mean as the context may ^{38 Vic. No. 5.}
require the Supreme Court of Queensland or s. 4.
other the court for the time being having
jurisdiction in the insolvency.

“Examining Court” shall mean any court or
magistrate before whom any person is or-
dered to attend for examination under this
Act.

“Registrar” shall mean any registrar under this
Act.

“Principal Registrar” and “Principal Registry”
shall mean respectively the registrar of the
Supreme Court at Brisbane or any other
place or places at which there shall be a
registrar of that court and the office of such
registrar.

“District Registrar” and “District Registry”
shall mean respectively a district registrar in
insolvency and the office of such registrar.

“Prescribed” shall mean prescribed by rules of
court to be made as in this Act provided.

“Property” shall mean and include money goods
things in action land and every description
of property whether real or personal also
obligations easements and every description
of estate interest and profit present or future
vested or contingent arising out of or inci-
dent to property as above defined.

“Debt provable in insolvency” shall include any
debt or liability by this Act made provable
in insolvency.

38 Vic. No. 5.

s. 4.

“Creditor” shall mean also any two or more persons being jointly interested as partners or otherwise and incorporated, and joint-stock companies.

As to one or more members of a partnership acting on behalf thereof, see s. 177 (8).

“Creditors present at any meeting” and “Creditors assembled at any meeting” shall include creditors who are represented by some person duly authorised by such creditors in writing.

32 and 33 Vic.,
c. 71, s. 16 (5).

“Secured Creditor” shall mean any creditor holding any mortgage charge or lien on the insolvent's estate or any part thereof as security for a debt due to him.

“Telegraph” shall mean any telegraphic line the property of the Government and worked by electricity under their control within the colony.

“Telegraph Station” shall mean any station appointed by Government for the receipt of messages for transmission by telegraph or for the delivery of such messages when transmitted.

The following terms are also interpreted by the Act—

Acts of insolvency, ss. 44, 45.

Commencement of insolvency, s. 74.

Insolvent's property divisible amongst his creditors, s. 87.

The first meeting of creditors, ss. 92, 93.

An ordinary resolution, s. 93 (6).

A special resolution, s. 93 (7).

An extraordinary resolution, s. 204.

Trustee, s. 97.

Official Trustee, s. 78.

District receiver, s. 81.

Liability, s. 140.

Settlement, s. 106.

Fraudulent preference, ss. 107, 108, 109.

Offences, pt. XI.

Debts provable, s. 140.

Rules of court, s. 27.

For definitions under the rules, see r. 1.

See further *The Acts Shortening Act of 1867* (31 Vic., No. 6).

38 Vic. No. 5.

s. 5-7.

5. Whenever under this Act it shall be necessary to compute a majority of creditors no creditor whose debt does not exceed ten pounds shall be counted in reckoning a majority in number but the debt due to such creditor shall be taken into account in reckoning a majority in value.

Mode of calculating majority of creditors.
32 and 38 Vic., c. 71, s. 125 (14).

6. *The Insolvency Act of 1864* is hereby repealed saving always its effect in regard to any act or deed done or granted prior to the commencement of this Act Provided always that all matters at the commencement of this Act pending in the insolvency jurisdiction of the Supreme Court under the said Act shall be continued and completed therein as if this Act had not been passed.

Repeal of 28 Vic., No. 25, except as to proceedings commenced under it at commencement of operation of this Act.

7. The provisions of this Act shall have effect only in cases where the petition for adjudication of insolvency is presented after the commencement of this Act but every act of insolvency petitioning creditors' debts or other thing existing or done before the commencement of this Act which would have authorised proceedings in insolvency or have supported adjudication of insolvency under *The Insolvency Act of 1864* and which if it had existed or been done after the commencement of this Act would have authorised proceedings in insolvency or have supported adjudication of insolvency under this Act shall be sufficient to authorise proceedings in insolvency and to support adjudication of insolvency under this Act And any

Application of Act to future insolvencies.

38 Vic. No. 5.
ss. 8-9.

proceedings taken with a view to obtain adjudication of insolvency before the commencement of this Act which if they had been instituted after such commencement would have supported adjudication of insolvency shall have the like validity effects and consequences as if they had been so instituted For the purpose of this section the words "proceedings in insolvency" shall include proceedings in any court of criminal jurisdiction for the punishment of any offence against the law of insolvency and proceedings in any court of civil jurisdiction in respect of or for the purpose of avoiding any conveyance assignment gift delivery or transfer of property or charge thereon or payment of money or other act or thing being an act of insolvency or fraudulent preference.

PART II.—CONSTITUTION AND POWERS OF COURT— PRACTICE.

Supreme Court
to be court in
insolvency
unless otherwise
provided.

8. Except as herein otherwise provided the Supreme Court of Queensland shall be the court of insolvency And all the powers by this Act conferred upon the said court except those appertaining to its jurisdiction as a court of appeal may be exercised by a single judge thereof subject to appeal as herein provided.

The judge only sits on his regular chamber days, unless a special day appointed and notice thereof given to the principal registrar, Reg. Gen., 5th Sept., 1876, *post*.

Case

The registrar is to attend with the papers, 6th March, 1877.

District courts
may be
appointed courts
in insolvency.

9. The Governor in Council may appoint any district court to be a district court in insolvency and any police magistrate or clerk of petty sessions to be a district registrar in insolvency under this Act and any such appointment may revoke or suspend Whenever

any such appointment of a district court as a court in insolvency shall have been made the judge of such court shall be a judge in insolvency and the registrar thereof shall be a district registrar in insolvency under this Act.

38 Vic. No. 5.
ss. 10-11.

District
registrars.

All adjudications are to be made by the Supreme Court, s. 32.

10. Any judge may sit in chambers for the despatch of such business as may without detriment to the public advantage arising from the discussion of questions in open court be heard in chambers and when sitting in chambers he shall have in all respects like power and jurisdiction as when sitting in court. Provided always that the decisions of any judge so acting shall in all cases be subject to appeal as in the fifteenth sixteenth and seventeenth sections of this Act directed.

Judge may sit in
chambers.
32 and 33 Vic.,
c. 71, s. 65.

The examination of the insolvent under s. 164 of the Act, and the granting of a certificate of discharge, may not be heard and disposed of in chambers, r. 2, *post*.

As to when matters should be heard in open court, see r. 3, *post*.

The judge only sits on his regular chamber days, unless a special day appointed, and notice thereof given to the principal registrar, Reg. Gen., 5th Sept., 1876, *post*.

As to service of notice in writing of the proceedings upon the trustee, see Reg. Gen., 17th Sept., 1877, r. 4, *post*.

11. Every judge in insolvency shall for the purposes of this Act in addition to his ordinary powers as a judge of the Supreme Court or district court have all the powers and jurisdiction of a judge of the Supreme Court in its equitable jurisdiction and the orders of such judge may be enforced accordingly in the same manner as those of a judge of the Supreme Court in such jurisdiction or in such other manner as may be prescribed.

Powers of judge
in insolvency.
32 and 33 Vic.,
c. 71, s. 65.

38 Vic. No. 5. For power to amend, see *The Supreme Court Act of 1874* (38 Vic. ss. 12-15. No. 3), s. 11.

Case. An order has been enforced by committal for contempt.—*Re C. Haupt*, February 7th, 1876.

One judge may act for another. 12. Any judge of a district court may act in insolvency for a judge of any other district court.

Judges to hold sittings at certain times. 13. The judge of every district court in insolvency shall hold sittings of the court in insolvency at each town or place where the district court is holden immediately after the ordinary sittings of the said court and may hold other sittings at any such town or place at any time of which the prescribed notice shall have been given.

As to other times for sittings, see r. 165, *post*; as to all adjudications being made by the Supreme Court, see s. 32.

Court may review its orders. 32 and 33 Vic., c. 71, s. 71. 14. Every court in insolvency may review rescind or vary any order made by it in pursuance of this Act.

As to the time limited for appealing, see s. 16.

Supreme Court to be court of appeal. 32 and 33 Vic., c. 71, s. 71. 15. The Supreme Court of Queensland shall be the court of appeal in insolvency and all decisions and orders of courts in insolvency and examining courts under this Act shall except as hereinafter provided be subject to appeal to the said court.

But decisions and orders of the courts in insolvency relating only to claims to prove debts of less amount than thirty pounds or relating only to the possession payment or delivery of property or money of less value than thirty pounds shall not be subject to appeal.

For the practice on appeals, see rr. 124-130, *post*; as to stay of proceedings on appeal, see s. 17.

16. Unless in this Act otherwise provided all appeals shall be subject to such provisions respecting notice of appeal deposit or other security for costs procedure evidence and other matters as may be prescribed by general rules made under this Act The time for notice of appeal shall be limited to twenty-one days from the date of the decision or order to be appealed from.

38 Vic. No. 5.
ss. 16-18.
Appeals subject
to general
orders.
32 and 33 Vic.,
c. 71, s. 71.

For these provisions, see rr. 124-130, *post*.

17. Proceedings shall not be stayed by appeal but on cause shown the court from which the appeal is brought may if it thinks fit order them to be stayed and the Supreme Court may in any case either on motion before the hearing of an appeal or when deciding thereon order any such proceeding to be taken as in the circumstances appears to it proper for the due and convenient prosecution of the matter although the time fixed for such proceeding has expired.

Stay of
proceedings on
appeal.

18. The Supreme Court may if it think fit at any time after adjudication upon the application of the insolvent or of the trustee or of any creditor make an order referring all or any part of the proceedings under such adjudication to any district court in insolvency and shall if necessary order the whole or any part or office copies of the whole or any part of the written proceedings in the insolvency to be transmitted to such district court and the judge thereof shall forthwith appoint a time for the hearing and carrying on such proceedings or such part thereof as shall be so referred And every district court to which such proceedings are so referred shall for the purposes of such proceedings have all the jurisdiction

Power to
transfer cases to
district court in
certain cases.

38 Vic. No. 5. and powers of the court of insolvency as declared and
ss. 19-22. conferred by this Act.

For rules as to transfer of proceedings, see rr. 66-69, *post*; for forms, Nos. 32, 33; as to re-transfer, see s. 177 (3); as to the proceedings, see note to the schedule of forms.

Special case may
 be stated.

19. In any insolvency or other proceeding within the jurisdiction of the court the parties concerned may at any stage of the proceedings state any question or questions in a special case for the opinion of the court. And if in such case it is stated that the decision of the court shall be final no appeal shall lie therefrom.

Mode of taking
 evidence.
 E. R. 1870, r. 49.

20. The court may in all matters within its jurisdiction at its discretion take the whole or any part of the evidence *viva voce* upon oath or by interrogatories in writing or upon affidavit or in any of such ways and may issue commissions for the purpose of taking evidence at any place either within or without the limits of its jurisdiction and either within or without the colony.

Court may
 award costs.
 E.R. 1870, r. 186.

21. The court may award costs in any matters under this Act and costs so awarded shall be recoverable in the same manner as costs awarded by a rule of the Supreme Court and the like remedies may be had on an order under this Act for costs as on any such rule or such other remedies as may be prescribed.

For form of writ of *fi. fa.* on an order for payment of costs to be taxed, see No. 112, *post*; of writ of *elegit* on like order, No. 115.

General power
 of the court.
 32 and 33 Vic
 c. 71, s. 72.

22. Subject to the provisions of this Act every court having jurisdiction in insolvency under this Act shall have full power to decide all questions of priorities and all other questions whatsoever whether of law

or fact arising in any case of insolvency coming within the cognizance of such court or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case and no such court as aforesaid shall be subject to be restrained in the execution of its powers under this Act by the order of any other court nor shall any appeal lie from its decisions except in manner directed by this Act subject also to the provisions of this Act every court having jurisdiction in insolvency shall be deemed to have jurisdiction throughout the colony.

38 Vic. No. 5.
ss. 23-24.

As to appeals, see ss. 15, 16, rr. 124-130, *post*.

23. If in any proceeding in insolvency there arises any question of fact which the parties desire to be tried before a jury instead of by the court itself or which the court thinks ought to be tried by a jury the court may direct such trial to be had before itself or some other competent court accordingly and shall settle the form in which such question of fact shall be stated for trial and give all necessary directions for the purpose of such trial.

Questions of fact may be tried by a jury. 82 and 83 Vic., c. 71, s. 72.

For the practice on trials by jury, see rr. 162-164, *post*.

The word "parties" means parties to the litigation as distinguished from parties to the insolvency.—*Payne v. Trustee of Conroy*, Feb. 25th, 1881.

Case.

24. When any questions are directed to be tried before a jury the like rules and orders may be made the like precepts issued and the like things in all respects done and by the like authority for the purpose of procuring and enforcing the attendance of a jury for the trial of such questions as might be made issued or done by the same court and the judges

Provisions as to juries.

38 Vic. No. 5. thereof for the purpose of procuring and enforcing
s. 25. the attendance of juries in actions in the common law jurisdiction of such court.

Every such jury shall consist of persons possessing the qualifications and shall be struck summoned balloted for and called in like manner as if such jury were a jury for the trial of an action at common law in the same court And every juryman so summoned shall be entitled to the same rights and subject to the same duties and liabilities as if he had been duly summoned for the trial of an action at common law in the same court.

Every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such action at common law.

And generally for all purposes of or auxiliary to the trial of any such issues before a jury the court or judge before whom the same shall be tried shall have the same jurisdiction powers and authority in all respects as belong to the same court or judge in their common law jurisdiction for the like purposes.

Orders and Warrants of the Court.

Enforcements of warrants and orders of courts. 32 and 33 Vic., c 71, s. 74. 25. All courts of insolvency and the officers of such courts respectively shall severally act in aid of and be auxiliary to each other in all matters of insolvency and an order of the court seeking aid together with a request to another of the said courts shall be deemed sufficient to enable the latter court to exercise in regard to the matters directed by such order the like jurisdiction which the court which made the request

as well as the court to which the request is made 38 Vic. No. 5.
 could exercise in regard to similar matters within ss. 26-28.
 their respective jurisdiction.

26. Where any court having jurisdiction in insol- Commitment to
prison.
32 and 33 Vic.,
c. 71, s. 77.
 vency under this Act commits any person to prison
 the commitment may be to such convenient prison as
 the court thinks expedient and if the gaoler of any
 prison refuses to receive any prisoner so committed he
 shall be liable for every such refusal to a penalty not
 exceeding one hundred pounds.

General Rules.

27. General rules in this Act described as rules of General rules
may be made
from time to
time.
32 and 33 Vic.
c. 71, s. 78.
 court may be made from time to time for the effectual
 execution of this Act and of the objects thereof and
 the regulation of the practice and procedure upon
 insolvency petitions and the proceedings thereon and
 the said general rules may from time to time be
 revoked and altered All such rules shall be made
 by the judges of the Supreme Court or a majority of
 them of whom the Chief Justice shall be one.

The following rules have been made, and are now in force under
 this section :—

Reg. Gen. of Thursday, Oct. 1st, 1874.

Reg. Gen. of Tuesday, Sept. 5th, 1876.

Reg. Gen. of Friday, Aug. 17th, 1877.

Reg. Gen. of Thursday, Aug. 29th, 1878.

Reg. Gen. of Friday, Dec. 12th, 1879.

These will be found set out in full, *post*.

28. Any general rules made as aforesaid may pre- Matters to be
provided for by
general rules.
32 and 33 Vic.
c. 71, s. 78.
 scribe regulations as to the service of insolvency peti-
 tions including provisions for substituted service as to
 the valuing of any debts provable in an insolvency as
 to the valuation of securities held by creditors as to
 the giving or withholding interest or discount on or in

38 Vic. No. 5. ss. 29-30. respect of debts or dividends as to the funds out of

which costs are to be paid the order of payment and the amount of taxation thereof as to the fees to be charged and collected for any business done by any court of insolvency or any officer thereof and as to whether the same shall be collected by stamps or otherwise and as to any other matter or thing whether similar or not to those above enumerated in respect to which it may be expedient to make rules for carrying into effect the objects of this Act and any rules so made shall be deemed to be within the powers conferred by this Act and shall be of the same force as if they were enacted in the body of this Act.

Rules in force prior to this Act so far as practicable to continue in force until rules made in pursuance of this Act. 32 and 33 Vic., c. 71, s. 78.

29. Until rules have been made in pursuance of this Act and so far as such rules do not extend the principles practice and rules on which the Supreme Court has heretofore acted in dealing with insolvency proceedings shall be observed by any court having jurisdiction in insolvency cases under this Act.

Application of the Act to Debtors.

Limited partnerships and joint stock companies not to be liable to the Act except as specified.

30. Limited partnerships under *The Mercantile Act of 1867* and companies corporate or registered under *The Companies Act 1863* shall not be adjudged insolvent under this Act Provided that the general partner or partners of any such limited partnership may be adjudged insolvent in respect of any act of insolvency committed by him or them in respect of the business or estate of such partnership And upon such adjudication such partner or partners and the property of the partnership shall be liable to all the provisions of this Act in the same manner as if such property

were the property of the partner or partners so adjudged insolvent. 38 Vic. No. 5.
s. 31-35.

As to limited partnerships, see *The Mercantile Act of 1867* (31 Vic., No. 36), ss. 53-68.

31. Except as aforesaid the provisions of this Act respecting adjudication of insolvency shall extend and be applicable to all debtors resident within the colony or having property within the colony. Otherwise Act to apply to all debtors resident or having property in Queensland.

Practice.

32. All adjudications of insolvency shall be made by the Supreme Court or a judge thereof and not otherwise. Adjudication to be by Supreme Court only.

As to service of a duplicate copy of the order of adjudication on the official trustee, see Reg. Gen., 17th August, 1877, r. 2, *post*.

33. Proceedings for adjudication of insolvency shall be by petition. Proceedings to be by petition.

For form of debtor's petition, see s. 41; of creditor's, s. 50.

As to every petition being dated the day on which it is signed, see Reg. Gen., 17th August, 1877, r. 6, *post*.

As to petition for adjudication against debtors, whose usual residence is not within the district of the northern judge, not being made returnable elsewhere than at Brisbane, see *The Supreme Court Act of 1874*, (38 Vic., No. 3), s. 20, *post*.

34. Any petition for adjudication of insolvency may be presented at and filed in the principal registry or any district registry. Petition when to be presented and how. Provided that if filed in a district registry it shall be filed in duplicate.

As to transmission of copy to the principal registry, see s. 35; by telegraph, ss. 36, 37.

35. When a petition is filed in a district registry one of the duplicate copies of the petition authenticated under the seal of the registry with the day and hour of presentation marked thereon shall forthwith When in district registry copy to be transmitted to principal registry

38 Vic. No. 5. be transmitted to the principal registry and the other
ss. 36-38. shall be retained in the district registry.

As to transmission by telegraph, see ss. 36, 37.

Copy may be
transmitted by
telegraph.

36. If the petitioner shall so require the district registrar shall forthwith after the filing of a petition in the district registry transmit a copy thereof to the principal registry by telegraph.

For the mode of proceeding, see r. 249, *post*, and s. 37.

Provisions of
*"Telegraphic
Messages Act of
1872"* to apply to
petition.

37. The provisions of "*The Telegraphic Messages Act of 1872*" respecting the transmission by telegraph of documents requiring authentication by signature or seal shall extend and apply to all petitions for adjudication of insolvency.

See this Act, ss. 4-10, *post*.

Transmission of
documents by
telegraph by
registrar.

38. The principal registrar or any district registrar may and if required so to do shall cause to be transmitted by telegraph to any other registrar the contents of any petition affidavit order or other document filed in his registry.

When the contents of any document by this Act authorised or required to be transmitted by telegraph have been so transmitted the officer in charge of the telegraph station to which they are transmitted shall after satisfying himself that a true copy of the document has been received and written at length indorse on such copy a certificate under his hand that such copy is a true copy of a document transmitted by the registrar transmitting the same and naming such registrar.

Every copy so indorsed and certified shall be as

valid to all intents and purposes as the original document whereof it purports to be a copy would have been and shall be admissible and admitted as evidence in any case in which the original would have been so admissible or admitted. 38 Vic. No. 5.
s. 39-41.

For the mode of proceeding, see r. 249.

39. Any person prejudicially affected by any adjudication of insolvency may within the prescribed time and on the prescribed notice to all parties apply to the court to annul the adjudication and if sufficient cause be shown the court shall annul the same accordingly. Annulling
adjudication.

For the practice, see r. 37; for the form of the application, see No. 43; the order, No. 49; the notice in the *Gazette*, No. 50; for the consequences of the annulling of the adjudication, see s. 178; for power to annul in other cases, see ss. 14, 134, r. 200, s. 163; as to service of notice in writing of the proceedings upon the trustee, see Reg. Gen., 17th August, 1877, r. 4.

PART III.—DEBTORS' PETITIONS.

40. Any debtor may petition for adjudication of insolvency against himself and the filing of such petition shall be an act of insolvency. Debtor may
petition against
himself.

As to serving an office copy of the petition upon the principal receiver, see Reg. Gen., 17th Aug., 1877, r. 1, see as to practice, note to s. 46; as to the occupation of the insolvent being described in full, in addition to his name and address, see Reg. Gen., 17th Aug., 1877, r. 5.

As to petition against a debtor whose usual residence is not within the district of the northern judge, not being made returnable elsewhere than at Brisbane, see *The Supreme Court Act of 1874* (38 Vic., No. 3), s. 20.

41. Debtors' petitions may be in the following form or to the like effect— Form of debtors,
petition.

38 Vic. No. 5.

To the Supreme Court of Queensland.

ss. 42-43.

The petition of A.B. of _____ sheweth that your petitioner is unable to meet his engagements with his creditors.

Your petitioner therefore prays that he may be adjudicated insolvent.

and shall be signed by the petitioner and attested by some justice of the peace or commissioner for affidavits or registrar.

As to entitling "In the Supreme Court of Queensland in Insolvency," see note to the schedule of forms.

As to marking the petition with the name of a judge, and taking subsequent proceedings before such judge, see Reg. Gen., 5th Sept., 1876, rr. 1, 2, 4; as to service of an office copy of the petition on the principal receiver forthwith after filing, see Reg. Gen., 17th Aug., 1877, r. 1; as to the petition being dated the day upon which it is signed, see *ibid*, r. 6; and describing the insolvent by his name, address, and occupation, *ibid*, r. 5.

Every insolvency petition requires a £2 stamp, see Table II.; and is to be dated the day on which it is signed, Reg. Gen., 17th Aug., 1877, r. 6.

Petitions by
partnerships.

42. A petition for insolvency against a partnership may be presented by the majority of the members thereof who at the time of presenting the petition are usually resident within the colony.

As to limited partnership, see s. 30.

Adjudication on
petition.

43. When a debtor's petition shall have been presented and (if presented to a district registry) transmitted to the principal registry the court shall forthwith after such presentation or transmission proceed to adjudicate thereon and upon due proof make adjudication of insolvency against the petitioner.

As to the adjudication being on the debtor's application only, see rule 22.

The application will not be entertained after the lapse of four weeks from the date when the petition reaches the principal registry, r. 22. As to its then being deemed to be dismissed, see

Reg. Gen., 17th August, 1877, r. 10; as to service of a duplicate of 38 Vic. No. 5. the order of adjudication on the trustee, see *ibid*, r. 2. s. 44.

It is not necessary that a petition for adjudication under this Cases. section should be supported by affidavit.—*Regina v. King*. Q.L.R. pt. 1, 73.

The registrar is not to present the petition to the judge.—*Re Friend*, Dec. 23rd, 1874.

PART IV.—CREDITORS' PETITIONS.

44. Any debtor liable to the provisions of this Act ^{Acts of} who shall have committed any of the following acts ^{insolvency.} shall be deemed to have committed an act of insolvency and shall be liable to be adjudicated insolvent upon the petition of any creditor or creditors competent to present such petition that is to say—

For concise statements of the following acts of insolvency to be used in petition, see s. 51.

- (1.) If the debtor has in the colony or elsewhere ^{32 and 33 Vic.,} made a conveyance or assignment of his ^{c. 71, s. 6 (1).} property to a trustee or trustees for the benefit of his creditors generally.

As to the validity of acts *bonâ fide* done by the trustee without notice of proceedings for adjudication, see s. 105.

- (2.) If the debtor has in the colony or elsewhere ^{32 and 33 Vic.,} made a fraudulent conveyance gift delivery ^{c. 71, s. 6 (2)} or transfer of his property or any part thereof.

An affidavit in the form given in s. 54 is *prima facie* evidence.—Case. *Re Douglas*, March 2nd, 1881.

- (3.) If the debtor has with intent to defeat or ^{32 and 33 Vic.,} delay his creditors done any of the following ^{c. 71, s. 6 (3).} things namely—departed out of the colony or being out of the colony remained out of the colony or departed from his dwelling-house

38 Vic. No. 5.
s. 44.
— — — — —

or otherwise absented himself or begun to keep house.

As to service in these cases, see rr. 51, 52.

32 and 33 Vic.,
c. 71, s. 6 (4).

- (4.) If the debtor has filed in the prescribed manner a declaration admitting his inability to pay his debts.

For the requisites of this declaration, see r. 11 ; for its form, No. 1 ; as to the hearing of a petition founded thereon, see r. 31.

- (5.) If the debtor has presented a petition for adjudication of insolvency against himself under Part III. of this Act.

32 and 33 Vic.,
c. 71, s. 6 (5).

- (6) If an execution issued against a debtor on any legal process for the purpose of obtaining payment of not less than fifty pounds has been levied by seizure and the debtor has not *bonâ fide* satisfied such process by payment or otherwise within four days from such seizure.

As to validity of executions levied and paid over without notice of petition, see s. 105.

- (7.) If the debtor has after the presentation of a petition for adjudication of insolvency against him paid given or delivered or caused to be paid given or delivered to the creditor or creditors presenting such petition money or any satisfaction as security for his or their debt or debts or any part thereof whereby the petitioning creditor or creditors may receive more in the pound than other creditors.

- (8.) If the debtor has given or executed any ^{38 Vic. No. 5.} fraudulent warrant of attorney or *cognovit* s. 44. *actionem*.

As to cases in which a warrant of attorney or *cognovit actionem* is fraudulent, see "*The Common Law Practice Act of 1867*" (31 Vic. No. 17), ss. 87, 88.

- (9.) If the creditor presenting the petition has ^{32 and 33 Vic.} served on the debtor in the prescribed _{c. 71, s. 6 (6).} manner a debtor's summons requiring him to pay a sum due of an amount of not less than fifty pounds and the debtor has for such time succeeding the service of the summons as may be specified therein neglected to pay such sum or to secure or compound for the same to the satisfaction of the creditor.

As to the proceedings in relation to a debtor summons, see ss. 48, 49, and notes thereto; as to the hearing of a petition for adjudication founded on a debtor's summons, see r. 30.

- (10.) If a debtor having against him the sentence judgment or decree of any competent court and being thereunto required has failed to satisfy the same or to point out to the officer charged with the execution thereof sufficient disposable property to satisfy the same.
- (11.) If at any meeting of his creditors a debtor shall have consented to present a petition under Part III. of this Act and shall not within forty-eight hours from the time of such consenting (or such further time as may be rendered necessary by illness distance or other sufficient cause) have presented such petition.

38 Vic. No. 5.
ss. 45-46.

(12.) If at any meeting of his creditors a debtor shall have admitted that he is unable to meet his engagements or shall offer a composition of less than twenty shillings in the pound in cash and having been requested by a majority of the creditors present at such meeting to present a petition under Part III. of this Act shall not within forty-eight hours after such request (or such further time as may be rendered necessary by illness distance or other sufficient cause) have presented such petition.

(13.) If a debtor has given or made any preference to or in favor of any creditor which if the debtor were adjudicated insolvent under this Act would be deemed a fraudulent preference of such creditor.

(14.) If a debtor has been adjudged or declared bankrupt or insolvent in any British court out of the colony having jurisdiction in bankruptcy or insolvency or for the relief of insolvent debtors or has presented a petition to any such court praying adjudication of bankruptcy or insolvency against himself.

Act of
insolvency must
be committed
within six
months prior to
presentation of
petition for
adjudication.
32 and 33 Vic.,
c. 71, s. 6.

45. No person shall be adjudged an insolvent on any of the grounds in the last preceding section mentioned unless the act of insolvency on which the adjudication is grounded has occurred within six months before the presentation of the petition for adjudication.

Amount of
petitioning

46. A single creditor if the debt due to him by a

debtor amounts to fifty pounds or upwards or two 88 Vic. No. 5.
 creditors not being partners if the aggregate amount s. 47.
 of debts due to them by a debtor amounts to seventy creditor's debt.
 pounds or upwards or three or more creditors not 82 and 83 Vic.,
 being partners if the aggregate amount of debts due c. 71, s. 6.
 to them by a debtor amounts to one hundred pounds
 or upwards may present a petition to the court pray-
 ing that the debtor be adjudged an insolvent and
 alleging as the ground for such adjudication any one
 or more of the acts or defaults hereinbefore defined
 to be acts of insolvency Any number of creditors in
 partnership shall for the purposes of this section be
 deemed to be a single creditor.

As to petitions against partnerships, see s. 68.

As to the presentation and filing of petitions, see s. 34; their
 transmission from a district to the principal registry, s. 35; by
 telegraph, ss. 36, 37, 38; their form when presented by a debtor, s.
 41; by a partnership debtor, s. 42; by a creditor, s. 50; as to their
 verification, ss. 52, 54; signature, ss. 41, 53; as to a verification of
 the authority to present, s. 55; the service, ss. 56, 58; the indorsement
 for service, s. 57; and for the supplemental provisions as to proceed-
 ings upon the petition, see s. 177; for the practice under the rules
 on these subjects, see, as to creditor's petitions, rr. 23-36.

47. The debt of the petitioning creditor must be a Nature of
 liquidated sum due at law or in equity and subsisting petitioning
 as well at the time when the act of insolvency was creditor's debt.
 committed as at the time of presenting the petition 82 and 83 Vic.,
 It must not be a secured debt unless the petitioner c. 71, s. 6.
 state in his petition that he will be ready to give up
 such security for the benefit of the creditors in the
 event of the debtor being adjudicated an insolvent or
 unless the petitioner gives an estimate of the value of
 his security in which latter case he may be admitted
 as a petitioning creditor to the extent of the balance
 of the debt due to him after deducting the value so

38 Vic. No. 5. estimated But in such case he shall on an application being made by the trustee within the prescribed time after the date of adjudication give up his security to such trustee for the benefit of the creditors upon payment of such estimated value

s. 48.

Provided that any person who has given credit to a debtor for valuable consideration for any sum payable at a certain time which time had not elapsed when the act of insolvency was committed may petition or join in petitioning whether the time for payment has arrived at the date of presenting the petition or not.

See further as to secured creditors, s. 75; as to the trustee's application to the creditor to give up his security, see r. 100.

Proceedings in relation to a debtor's summons. 32 and 33 Vic., c. 71, s. 7.

48. A debtor's summons may be granted by a judge of the Supreme Court on a creditor proving to his satisfaction that a debt sufficient to support a petition in insolvency is due to the creditor from the person against whom the summons is sought and that the creditor has failed to obtain payment of his debt after using reasonable efforts to do so The summons shall be in the prescribed form resembling as nearly as circumstances admit a writ issued by the Supreme Court It shall state that in the event of the debtor failing to pay the sum specified in the summons or to compound for the same to the satisfaction of the creditor a petition may be presented against him praying that he may be adjudged an insolvent The summons shall have an endorsement thereon to the like effect or such other prescribed endorsement as may be best calculated to indicate to the debtor the nature of the document served upon him and the

consequences of inattention to the requisitions therein made. 38 Vic. No. 5.
s. 49.

As to the practice on the application, see rr. 12-19; for the form of the summons, see No. 4; of the affidavits, see Nos. 2 and 3; as to the service of the summons personally, see r. 46; by substitution, see rr. 48, 49, forms 8, 9; as to proof of the service, see r. 50.

A first petition being dismissed, no further proceedings can be had on the summons.—*Re Sparks*, January, 10th, 24th, 1876.

49. Any debtor served with a debtor's summons may apply to a judge of the Supreme Court in the prescribed manner and within the prescribed time to dismiss such summons on the ground that he is not indebted to the creditor serving such summons or that he is not indebted to such amount as will justify such creditor in presenting an insolvency petition against him and such judge may dismiss the summons with or without costs if satisfied with the allegations made by the debtor or it may upon such security (if any) being given as may seem just for payment to the creditor of the debt alleged by him to be due and the costs of establishing such debt stay all proceedings on the summons for such time as will be required for the trial of the question relating to such debt.

Debtor may apply to dismiss summons. 32 and 33 Vic., c. 71, s. 7.

Such trial shall be had either before the Supreme Court or a judge thereof or some other court by law competent to try and determine questions relating to debts of a like amount.

See note to last section. As to the practice relating to staying proceedings, see rr. 20, 21; for the form of the affidavit, see No. 5, and the order, No. 6; as to the practice on giving security, see rr. 133-140.

Where a debtor's summons is ordered to stand over for an action to be brought, and the court is of opinion that the probability is as much in favour of the success of the alleged debtor as of the

Case.

38 Vic. No. 5. creditor, the court will not order security to be given. McGhie, ss. 50-51. Luya, and Co. v. Gillis, Q.L.R. pt. 3, 70.

Form of
creditors'
petitions.

E.R. 1870., r. 27.

50. Creditor's petitions for adjudication of insolvency may be in the form following or to the like effect—

To the Supreme Court of Queensland.

The humble petition of A.B. of &c.

Showeth that C.D. of E. merchant [*or as the case may be*] is indebted to him in the sum of £

That your petitioner is informed and believes that the said C.D. lately and whilst so indebted to your petitioner committed an act of insolvency that is to say [*here state act or acts of insolvency relied on*].

Your petitioner therefore prays that the said C.D. may be adjudged insolvent.

See note to a. 41.

Every insolvency petition requires a £2 stamp, see Table II.; and is to be dated the day on which it is signed, Reg. Gen., 17th Aug., 1877. r. 6; and to be marked with the name of a judge before whom subsequent proceedings are to be taken, Reg. Gen., 5th Sept., 1876.

As to the occupation of the insolvent being described in full in addition to his name and address, see Reg. Gen., 17th Aug., 1877, r. 5.

Concise
statements of
acts of
insolvency.

51. In petitions the following short statements of acts of insolvency may be used and if such or the like statements are used they shall be sufficient—

- (1.) Made a conveyance [*or assignment*] of his property for his creditors.
- (2.) Made a fraudulent conveyance [*or gift or delivery or transfer*] of his property [*or part of his property*] to wit to E.F.
- (3.) With intent to defeat [*or delay*] his creditors departed out of the colony [*or remained out of the colony or &c*].
- (4.) Filed a declaration of insolvency.
- (5.) Filed an insolvency petition.
- (6.) Suffered his property to be seized in execution for fifty pounds [*and upwards*] and detained for four days.
- (7.) Fraudulently preferred a petitioning creditor to wit E.F.

- (8.) Gave a fraudulent warrant of attorney [*or cognovit 38 Vic. No. 5. actionem*]. s. 52.
- (9.) Failed for _____ days to pay secure or compound a debt of £ _____ which he was required to pay by a debtor's summons.
- (10.) Failed to satisfy or point out property to satisfy an execution.
- (11.) At a creditors' meeting consented to present an insolvency petition and failed to do so for forty-eight hours without excuse.
- (12.) At a creditors' meeting admitted his insolvency [*or offered a composition*] and being requested by a majority of creditors to present an insolvency petition failed to do so for forty-eight hours without excuse.
- (13.) Made a fraudulent preference of a creditor to wit E. F.
- (14.) Was adjudged insolvent [*or bankrupt*] in Victoria [*or as the case may be*] or presented a petition in Victoria [*or as the case may be*] for adjudication of insolvency [*or bankruptcy*] against himself.

The definitions are given in full in s. 44.

52. Petitions must except as hereinafter provided be verified by the oath of the petitioner or petitioners. Verification.
32 and 33 Vic.,
c. 71, s. 80 (1).

For the form of insolvency petitions, see, by a debtor, s. 41; by a creditor, s. 50; for form of affidavit in support, see s. 54. When the petition is presented by two or more creditors not in partnership, see r. 23.

When the petitioning creditor is a body corporate or joint-stock company or company authorised to sue in the name of a public officer the petition may be verified by the manager secretary or other authorised officer of such body corporate or company. Verification of
petition of
corporations.
32 and 33 Vic.,
c. 71, s. 80 (7).
E.R., 1870, r. 15.

As to a corporation acting by an agent, see s. 177 (7).

As to the chairman, or municipal clerk of municipalities, for the purpose of procuring adjudication representing the council, see *The Local Government Act of 1878* (42 Vic., No. 8), s. 263.

When the petitioning creditors are two or more persons in partnership the petition may be verified by one only of the partners. Verification of
petitions of
partnership.

38 Vic. No. 5. As to one or more members acting in the partnership name, see s. 53-56. 177 (8).

Verification of petition of foreigners. of When the petitioning creditor is out of the colony the petition may be verified by his attorney or agent within the colony duly authorised in that behalf.

See as to verifying the authority to present the petition, s. 55.

Signature of petitioner. 53. The petition shall be signed by the petitioner or some person by this Act authorised to verify the same.

Every petition is to be dated the day on which it is signed, Reg. Gen., 17th Aug., 1877, r. 6,

Form of verification. 54. The verification shall be by affidavit in the form following or to the like effect and annexed to or subscribed to the petition—

I X.Y. of &c. make oath and say that the statements in the above [or the annexed] petition are to the best of my belief true in substance and in fact.

And such affidavit shall be sufficient *prima facie* evidence to support the petition.

As to the persons before whom affidavits may be sworn, see r. 132.

As to showing authority to verify when the petition is not verified by the petitioner, see s. 55.

Authority to present petition to be verified. 55. Whenever a petition is verified by any person other than the petitioner or one of the petitioners such person shall in addition to verifying the same show also in his affidavit accompanying the petition that he is authorised under this Act to verify the petition.

Petitions must be served. 56. Every petition under this part of the Act shall be served upon the debtor.

As to service personally, see r. 47; by substitution, rr. 48, 49; 38 Vic. No. 5. forms, Nos. 8 and 9; and see as to the mode of service, s. 58; and ss. 57-59.
the note thereto as to proof of, r. 50.

57. The copy of the petition served shall have Indorsement on petitions for service.
indorsed thereon a summons in the form following or
to the like effect—

To the within-named C.D.

You are hereby required to enter an appearance to the
within petition at the Supreme Court Office Brisbane [*or other place
where an office of the Supreme Court may hereafter be established*]
within four days from the service hereof on you exclusive of the
day of service otherwise you will be adjudicated insolvent.

which summons shall be signed by the registrar and
sealed with the seal of his office.

As to the time for appearance, being, unless otherwise ordered,
the same as is allowed for appearing to a writ in an action, see
r. 25.

As to petition for adjudication against a debtor whose usual resi-
dence is not within the district of the northern judge not being
made returnable elsewhere than at Brisbane, see *The Supreme Court
Act of 1874* (38 Vic., No. 3), s. 20.

58. Service of petitions under this part of the Act Mode of service.
may be effected either personally or in such other
manner as may be prescribed or as the court upon the
application of the petitioner may direct.

See note to s. 56.

As to service where more respondents than one, see r. 26; where
act of insolvency is departure from the dwelling-house, see r. 51;
where the debtor is absent from the colony, see r. 52.

59. If at the expiration of four days after the day Proceedings if
no appearance
entered.
of service or such further time as may be prescribed
or as the court may think necessary to enable the
debtor to appear the debtor shall not have entered
an appearance to the petition at the place appointed

38 Vic. No. 5. by the summons the Supreme Court or a judge thereof
ss. 60-62. may proceed at any time thereafter upon due proof of
 service to adjudicate the debtor insolvent.

No fee for
 appearance.

No fee shall be demanded of a debtor for entering
 an appearance to a petition.

The time for appearance is fixed by r. 25 ; for the effect of non-
 appearance by the creditor, see r. 29.

Affidavits may
 be filed in
 district registry
 and transmitted
 by telegraph.

60. The petitioner instead of filing the affidavit of
 service or any other affidavit intended to be used by
 him in support of the petition in the principal registry
 may if he think fit file such affidavits or any of them
 in any district registry and require the district
 registrar to transmit copies thereof by telegraph to
 the principal registry and in such case the district
 registrar shall cause such copies to be transmitted
 accordingly. Provided that in such case the peti-
 tioner shall give notice with the copy petition served
 that he intends so to do.

Notice of
 intention to
 be given.

For mode of proceeding, see ss. 37, 38.

Proceedings on
 appearance.

61. If the debtor shall appear the petition shall be
 set down for hearing in chambers before the chamber
 judge on the next chamber day.

As to the debtor showing cause filing a notice of the statements
 in the petition he intends to deny, see r. 27 ; for form, see No. 10.

Affidavits
 intended to be
 used in showing
 cause may be
 filed in a district
 registry and
 transmitted by
 telegraph.

62. Any debtor intending to show cause against
 any petition may file any affidavit or affidavits in-
 tended to be used by him for that purpose in any
 district registry and may require the district registrar
 to cause copies thereof to be transmitted by telegraph
 to the principal registry in the same manner as herein-
 before provided with respect to affidavits filed by the
 petitioner.

See note to last section.

38 Vic. No. 5.

ss. 63-64.

63. When the debtor appears the court at the hearing of the petition shall require proof of the debt of the petitioning creditor and of the act of insolvency or if more than one act of insolvency is alleged in the petition of some one of the alleged acts of insolvency and if satisfied with such proof shall adjudge the debtor to be insolvent the court may adjourn the petition either conditionally or unconditionally for the procurement of further evidence or for any other just cause or may dismiss the petition with or without costs as the court thinks just.

Proceedings at
hearing of
petition.
32 and 33 Vic
c. 71, s. 8.

As to course where the petition is opposed, see r. 28; as to the case of a petition presented by two or more persons not in partnership, see r. 23; as to the nature of the debt, see s. 47; as to the petitioning creditor paying the costs, inclusive of the adjudication order, and receiving them again, s. 67; for the practice in reference to the hearing, see rr. 26-36. For form of adjournment, see No. 17; of dismissal, No. 15. As to the power of the court to substitute another creditor as petitioner if the petitioner does not proceed with diligence, see s. 177 (2). For power to summon witnesses, see s. 73.

As to service of a duplicate copy of the order of adjudication, on the official trustee, see Reg. Gen., 17th August, 1877, r. 2.

64. Where the debtor appears on the petition and denies that he is indebted to the petitioner or that he is indebted to such amount as would justify the petitioner in presenting an insolvency petition against him the court upon such security (if any) being given as the court may require for payment to the petitioner of any debt which may be established against him in due course of law and of the costs of establishing such debt may stay all proceedings on the petition for such time as may be required for trial of the question relating to such debt and such trial shall be had in manner hereinbefore provided with respect to disputed debts under debtors' summonses.

Proceedings
debt of
petitioning
creditor
contested.
32 and 33 Vic.,
c. 71, s. 9.

38 Vic. No. 5. As to the debtor's notice denying statement in the petition, see r. 27; for form, No. 10; for form of the order staying proceedings, see ss. 65-67. No. 11; for the practice as to giving security, see rr. 133-140; and for the forms, Nos. 12, 13, 14; as to the mode of trial, with respect to disputed debts, under debtors' summonses, see s. 49; as to the creditor continuing his proceedings for payment within twenty-one days of completion of security, see r. 34; as to the practice subsequent to the trial, see rr. 32, 33; for form of order dismissing the petition, see No. 15; for power to summon witnesses, see s. 73.

Case. Proceedings on petition stayed pending the trial of an issue. - *Re S. Bromberg*, November 25, 1875.

Where proceedings on one petition are delayed court may adjudge debtor insolvent on petition of another creditor.
82 and 83 Vic., c. 71, s. 2.

65. Where proceedings are stayed under the last preceding section the court may if by reason of the delay caused by such stay of proceedings or for any other cause it thinks just adjudge the debtor an insolvent on the petition of some other creditor and shall thereupon dismiss upon such terms as it thinks just the petition proceedings in which have been stayed as aforesaid.

For form of order, see No. 16; see as to the substitution as petitioner of another creditor, s. 177 (1) (2) and r. 35.

On payment by debtor to petitioning creditor the latter shall forfeit his debt and pay it to trustee.

66. If any debtor after the presentation of a petition for adjudication of insolvency against him shall pay money to the petitioning creditor or give or deliver or procure to be given or delivered to him any satisfaction or security for his debt whereby such petitioning creditor may receive more in the pound in respect of his debt than the other creditors such petitioning creditor shall forfeit his whole debt and shall also repay or deliver up such money or satisfaction or security or the full value thereof to the trustee.

Petitioning creditor to pay costs of proceedings.
E.R. 1870, r. 31.

67. The petitioning creditor shall defray the costs and expenses of all proceedings in the insolvency until and inclusive of the order of adjudication and

such costs and expenses having been first taxed shall be repaid to him out of the first moneys that shall be received from the estate of the insolvent.

38 Vic. No. 5.
ss. 68-69.

68. Any creditor of a partnership may in like manner as aforesaid present a petition for adjudication of insolvency against all or any one or more of the members of the partnership if any of the partners has committed an act of insolvency in respect of the estate of the partnership. And every order of adjudication made thereon shall be valid although it do not include all the partners. And after such order is made the like proceedings shall be had and taken thereon and concerning such estate and such partner or partners as are herein provided to be had and taken concerning other estates and persons.

Petitions against
partnerships.
32 and 33 Vic.,
c. 61, ss. 100, 101.

But nothing herein contained shall extend or be construed to prevent any creditor of any partnership from proceeding against any partner or the separate estate of any partner thereof in respect of debts due by the partnership in the same way as he might proceed against him in respect of debts due by such partner in his individual capacity.

As to petition by partnership for the adjudication of the firm, see s. 42.

As to limited partnerships under *The Mercantile Act of 1867* (31 Vic., No. 36), and joint-stock companies not being liable to be adjudicated except as specified, see s. 30.

General Provisions.

69. Every order of adjudication made under Parts III. and IV. of the Act shall specify a time and place at which the debtor is to come in and deliver to the trustee a full true and accurate statement verified on

Time for delivery
of statement of
debts, &c., to
trustee.

38 Vic. No. 5. oath of his debts and liabilities of every kind and of
 s. 70. the names and residences so far as known of his
 creditors and of the causes of his inability to meet his
 engagements.

For form of the order of adjudication, see No. 18; of the insolvent's statement of affairs, No. 28; as to serving a sealed copy of the order on the insolvent, see r. 72; as to the insolvent's duty of delivering his statement of affairs, inventory of property, lists of creditors and debtors, and of the debts due to and from them, see s. 122; and the verification of the same, r. 73; as to insolvent partners giving joint and separate statement, see r. 74; as to the order appointing an official trustee to be the official trustee of the estate and appointing meeting of creditors for the election of a trustee, see s. 83; as to the occupation of the insolvent being described in full in addition to his name and address, see Reg. Gen., 17th Aug., 1877, r. 5, *post*; as to service of an office copy of the certificate of confirmation of an elected trustee, immediately on the trustee, see *ibid*, r. 2.

Case.

Where the statement was not delivered on the day appointed, but was subsequently, after a notice of motion to commit for contempt, the following order was made. Upon the insolvent, before 3 p.m. this afternoon, finding bail in the amount of the debts shown in the statement of affairs that he has given up all his property, and that he will not leave the colony till he has passed his last examination, let this application stand dismissed; trustee's costs to come out of the estate; if the insolvent fails to find such bail, order according to motion.—*Re Cross*, Nov. 29th, 1880.

Advertisement
 of order of
 adjudication.
 32 and 33 Vic.,
 c. 71, s. 10.

70. A copy of the order of the court adjudging the debtor to be insolvent shall be published in the *Gazette* and be advertised locally in such manner (if any) as may be prescribed and the date of such order shall be the date of the adjudication for the purposes of this Act and the production of a copy of the *Gazette* containing such order as aforesaid shall be conclusive evidence in all legal proceedings of the debtor having been duly adjudged an insolvent and of the date of the adjudication so that it shall not be necessary in any such proceedings to prove any petitioning creditor's debt or act of insolvency in order to support the adjudication.

Order conclusive
 evidence.

As to filing a copy of the advertisement in the *Gazette* and local paper, and leaving copies of such papers with the registrar, see r. 9; as to advertising this order, see r. 36; as to the fees for advertisements required to be inserted by the registrar being paid in cash by the party taking the proceeding, see note at end of Table II. The court in *banco* laid it down that the advertisement should be inserted by the registrar and paid for by the trustee out of the first moneys realised in the estate (registrar's book, 485). As to service of this order on the insolvent, see r. 72; for form of adjudication, see No. 18; of notice thereof and of first meeting for insertion in local paper, see No. 19.

As to *Gazette* being evidence in all other cases when advertisements directed, see s. 186.

As to the *Gazette* being conclusive evidence, the point that it was not was abandoned.—*Reg. v. King*, February 11th, 14th, 1876.

Absconding Debtors.

71. If after a debtor's summons has been granted and before a petition for adjudication of insolvency is presented against a debtor it appears to the court that there is probable reason for believing that the debtor is about to leave the colony or to quit his place of residence with a view of avoiding payment of the debt for which the summons has been granted or of avoiding service of a petition of insolvency or of avoiding appearing to such petition or of avoiding examination in respect of his affairs or otherwise avoiding delaying or embarrassing proceedings in insolvency the court may by warrant addressed to any constable or prescribed officer of the court cause the debtor to be arrested and safely kept as prescribed until such time as the court may order.

The court may cause absconding debtors to be arrested. 33 and 34 Vic., c. 76, s. 1.

Nothing in this section contained shall be construed to alter or qualify the right of the debtor to apply to the court in the prescribed manner to dismiss the summons or to pay secure or compound for the debt

Preserving right of the debtor to apply to dismiss the summons.

38 Vic. No. 5. within the time in this Act provided without being
 s. 72. deemed to have committed an act of insolvency.

Discharge of the
 debtor.

Upon any such payment or composition being made or such security offered as the court thinks reasonable the debtor shall be discharged out of custody unless the court otherwise order.

What arrests are
 valid.
 33 and 34 Vic.,
 c. 76, s. 2.

No arrest under this section shall be valid unless the debtor be served with the debtor's summons before or at the time of his arrest.

Payment or
 security for debt
 after arrest.
 33 and 34 Vic.,
 c. 76, s. 3.

No payment or composition of a debt made or security for the same given after an arrest made under this section shall be exempted from the provisions of this Act relating to fraudulent preferences.

As to the arrest of the debtor, see r. 151 ; for form of the warrant, see No. 61 ; as to arrest of absconding debtors, see s. 72 ; as to the address of the warrant, see r. 150 ; as to the prison to which the commitment is to be made, see s. 26 ; as to practice of granting a debtor's summons, see ss. 48, 49, and note thereto ; as to fraudulent preferences, see ss. 107, 108 and 109.

Arrest of
 insolvent under
 certain
 circumstances.
 32 and 33 Vic.,
 c. 71, s. 86.

72. The court may by warrant addressed to any constable or prescribed officer of the court cause a debtor to be arrested and any books papers moneys goods and chattels in his possession to be seized and him and them to be safely kept as prescribed until such time as the court may order under the following circumstances—

See note to last section. As to warrants generally, see ss. 25, 26 ; as to framing forms, see r. 4.

- (1.) If after a petition of insolvency is presented against such debtor it appear to the court that there is probable reason for believing that he is about to leave the colony or to

quit his place of residence with a view of avoiding service of the petition or of avoiding appearing to the petition or of avoiding examination in respect of his affairs or otherwise delaying or embarrassing the proceedings in insolvency.

38 Vic. No. 5.
s. 73.

(2.) If after a petition in insolvency has been presented against such debtor it appear to the court that there is probable cause for believing that he is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of by the trustee or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or chattels or any books documents or writings which might be of use to his creditors in the course of his insolvency.

(3.) If after the service of the petition on such debtor or after an adjudication in insolvency against him he remove any goods or chattels in his possession above the value of five pounds without the leave of the trustee or if without good cause shown he fails to attend any examination ordered by the court.

73. The court may before adjudication summon to attend before itself or before any district court in insolvency or police magistrate the debtor or any person whom it may think capable of giving any information concerning any act of insolvency committed by the debtor and may require any person

Power to
summon
witnesses before
adjudication.

38 Vic. No. 5. so summoned to produce any books or documents
s. 74. in his possession or power.

The examining court may examine such person and if such person being so summoned shall without reasonable excuse refuse or neglect to attend the examining court may order by warrant such person to be arrested and brought before it for examination and may order the seizure of all or any of the books or documents which such person may have been ordered to produce and may also punish such person so refusing or neglecting to appear by fine or imprisonment or both as in its discretion such court may think fit.

For the rules as to witnesses, see rr. 141-145; for form of subpoena, see No. 62; as to transmitting the depositions to the court, see s. 182; as to reducing the evidence into writing and its signature by the deponent, see r. 166; as to shorthand writers, see s. 183, r. 167; as to the power of the court to commit summarily, if insolvent guilty of offence, see s. 216.

By *The Insolvency Act Amendment Act of 1876* (40 Vic., No. 12), s. 1,* orders on persons to attend before the police magistrates at Bowen and Brisbane are not to be made, and such magistrates are not to have jurisdiction under this section.

PART V.—CONSEQUENCES OF ADJUDICATION—

CUSTODY AND VESTING OF PROPERTY.

Definition of
commencement
of insolvency.
82 and 83 Vic.
c. 71, s. 11.

74. The insolvency of a debtor whether the adjudication is made upon his own or a creditor's petition shall be deemed to have relation back to and to commence at the time of the act of insolvency being completed on which the order is made adjudging him to be insolvent or if the insolvent is proved to have committed more acts of insolvency than one to have

* See this Act, *post*.

relation back to and to commence at the time of the first of the acts of insolvency that may be proved to have been committed by the insolvent within six months next preceding the presentation of the petition whereon the adjudication is founded. But the insolvency shall not relate to any such prior act of insolvency unless it be proved that at the time of committing such prior act the insolvent was indebted to some creditor or creditors in a sum or sums sufficient to support a petition in insolvency and that such debt or debts are still remaining due at the time of the adjudication.

38 Vic. No. 5.
ss. 75-76.

As to the sum sufficient to support the petition, see s. 46.

75. Where a debtor shall be adjudicated an insolvent no creditor to whom the insolvent is indebted in respect of any debt provable in the insolvency shall have any remedy against the property or person of the insolvent in respect of such debt except in manner directed by this Act.

Creditors bound
by insolvency
proceedings.
32 and 33 Vic.
c. 71, s. 12.

But this section shall not affect the power of any creditor holding a security upon the property of the insolvent to realize or otherwise deal with such security in the same manner as he would have been entitled to realize or deal with the same if this section had not been passed.

See *Cutmore v. Ash*, cited under s. 76.

Case.

76. Any person who shall be in custody of the sheriff or of any gaoler or officer under mesne process or in execution on any judgment decree or order for any debt or demand provable in insolvency shall upon adjudication of insolvency being made against him be entitled to apply to the court for and obtain an order

Discharge of
prisoner for debt
or on mesne
process.

38 Vic. No. 5. discharging him out of custody in respect thereof
s. 77. either absolutely or on such terms as the court
 may think fit to impose and shall be discharged
 accordingly

As to persons liable for penalties, damages, or costs, for printing blasphemous, seditious, or defamatory libels, see 11 Vic., No. 13, s. 14.

Cases.

Where a defendant had been arrested under a writ of *ca. re.* issued at the suit of the plaintiff, and a writ of *ca. sa.* had been issued to fix the bail, and he had been bailed and afterwards became insolvent, and subsequently the plaintiff had signed judgment in the action upon which the writ of *ca. re.* was obtained, it was held that the plaintiff was not entitled to a render of the defendant into custody by the bail in order to have terms imposed.—*Cutmore v. Ash*, Q.L.R. pt. 1, 65.

Order for discharge from custody made upon the insolvent's finding bail himself in £500, and two sureties of £250 each, to appear to pass his last examination or to satisfy his creditors that he had given up all his property, also not to leave the colony.—*Re Josephson*, H., J., at ch. August 6th, 1890. Like orders were made *re Snowden*, February 7th, 1877; *re Dickens*, February 19th, 1877; *re Howie*, April 23rd, 1879.

Power of court
 after presenta-
 tion of petition
 to restrain suits.
 82 and 83 Vic.
 c. 77, s. 18.

77. The court may at any time after the presenta-
 tion of an insolvency petition against the debtor
 restrain further proceedings in any action suit execu-
 tion or other legal process against the debtor in
 respect of any debt provable in insolvency or it may
 allow such proceedings whether in progress at the
 commencement of the insolvency or commenced during
 its continuance to proceed upon such terms as the
 court may think just.

The court may also at any time after the presenta-
 tion of such petition appoint a receiver or manager
 of the property or business of the debtor against
 whom the petition is presented or of any part thereof
 and may direct immediate possession to be taken of
 such property or business or any part thereof.

Applications under this section may be made *ex parte*. 38 Vic. No. 5.
s. 78.

Affidavits intended to be used on any such application may be filed in any district registry and copies thereof transmitted by the district registrar by telegraph to the principal registry. Evidence may be transmitted by telegraph.

For form of order restraining action, see No. 21 ; as to the powers of the court in proceedings for liquidation by arrangement or composition, see r. 194 ; for the power of the court to appoint a receiver, see r. 24 ; for the form of the application and appointment of a receiver, see No. 7 ; as to receiver's accounts, see r. 88 ; as to the mode of proceeding for transmission by telegraph, see r. 249 ; as to the receiver's expenses when the petition is dismissed, see Reg. Gen., 17th August, 1877, r. 11.

See *ex parte* J. H. Burns, 1 Q.L.J. 140, cited under r. 194.

Cases.

An action commenced after the commencement of the insolvency transferred to the insolvency court to be brought on for trial on motion.—*Payne v. Trustee of Conroy*, February 25th, 1881.

73. The Governor in Council may appoint such and so many persons to be called official trustees with such yearly salary as may be voted by Parliament for that purpose as may from time to time be required and in case any official trustee shall die or leave the colony or be removed from his office may appoint another person to be official trustee in his room who shall thereupon succeed to all the rights powers duties and liabilities of his predecessor and in whom shall vest by virtue of his appointment without any conveyance or assignment for that purpose all the property vested in his predecessor as official trustee. Official trustees.

As to the official trustee's security, see s. 79 ; payment of percentage on sums collected, s. 80 ; being principal receiver in insolvency, s. 81 ; appointment by every order of adjudication of official trustee of the estate, s. 83 ; being trustee for the purposes of the Act until a trustee is elected, s. 84 ; taking possession of the property, and selling that of a perishable nature, and preserving the residue until

38 Vic. No. 5. after the time for the election of a trustee has elapsed, s. 85 ; not
ss. 79-82. finding security when trustee ; accounts being audited, r. 111 ; as
 to the trustee's indemnity, see s. 100.

Security to be
 given by official
 trustees.

79. Every such official trustee shall before entering on his duties give such security by bond with two sureties to Her Majesty for the due performance thereof as the court shall direct.

As to the security. see r. 251.

Official trustees
 to pay into
 consolidated
 revenue 5 per
 cent. of sums
 collected by
 them.

80. Every official trustee shall pay into the consolidated revenue of the colony a sum at the rate of five pounds for every hundred pounds that shall come to his hands as such trustee as the proceeds of property realized or debts collected by him while acting as such trustee But such percentage shall not be chargeable upon any moneys that shall come to his hands by devolution from any elected trustee that may have preceded him in his office.

Case.

Sums found on the premises of the insolvent in notes and cheques are liable.—*Re P. M. Harrison*, July 7, 1875.

District
 receivers.

81. The Governor in Council shall from time to time appoint in every place in which there is a district registrar of insolvency some fit person to be called a district receiver of insolvency under this Act who shall perform within the district for which he is appointed all the duties by this Act imposed upon district receivers.

Principal
 receiver.

The official trustee or such one of the official trustees (if more than one) as may be appointed by the Governor in Council shall be the principal receiver in insolvency.

Receiver to take
 possession on
 debtor's petition
 being presented.

82. Immediately upon the presentation of a petition for adjudication under Part III. of this Act the

receiver for the district in the registry whereof the petition is presented if it is presented in a district registry or the principal receiver if the petition is presented in the principal registry shall take or cause to be taken possession of all the property of the petitioner wherever situate and shall retain the same in his possession and custody until adjudication of insolvency has been made or the petition has been dismissed.

36 Vic. No. 5.
s. 83.

As to the adjudication being on the debtor's application only, and not being entertained after the lapse of four weeks from the date when the petition reaches the principal registry, see r. 22; as to the petition by a debtor being deemed to be dismissed without formal application when application for adjudication has not been made as required by r. 22, see Reg. Gen., 17th Aug. 1877, r. 10, *post*; as to the payment of the receiver's expenses in such case, see *ibid*, r. 11.

83. Every order adjudging a debtor insolvent shall appoint some one of the official trustees or if there be but one shall appoint such one to be the official trustee of the estate of the insolvent and shall also appoint some day not earlier than six days nor later than twenty days from the date of the order for holding a general meeting of his creditors for the election of a trustee.

Official trustee
to be appointed.

As to the official trustee continuing trustee until a trustee is elected, see s. 84; as to the appointment of a trustee, see s. 92 (1); as to the official trustee not finding security, and the audit of his accounts, see r. 111; as to the receipt and decision on proofs by the trustee, see s. 132 (1), rr. 53, 101; as to the official trustee acting during vacancies in the office of trustee, see s. 101 (3).

As to serving an office copy of the certificate of confirmation of an elected trustee upon the official trustee, see Reg. Gen., 17th August, 1877, r. 3, *post*.

As to the trustee's account being audited by the accountant in insolvency, where no committee of inspection is appointed, see Reg. Gen., 17th August, 1877, r. 8, *post*.

38 Vic. No. 5. An application to fix a fresh day for the first meeting was refused
 ss. 84-87. the adjudication not having been drawn up and a month having
 elapsed.—*Re Allen and Jones*, December 14th, 1880.

Case.

And to continue
 until trustee is
 elected.
 32 and 33 Vic.
 c. 71, s. 17.

84. Until a trustee is elected by the creditors the official trustee so appointed by the order of the court shall be the trustee for the purposes of this Act and immediately upon the order of adjudication being made the property of the insolvent shall forthwith pass to and vest in him and shall continue to be vested in him unless and until a trustee is elected as aforesaid.

See note to the last section ; as to the vesting of the property in the trustee when appointed, see s. 96 ; and for the definition of "trustee," see s. 97.

Case.

The proceedings in an insolvency were ordered to be transferred from Bowen to Brisbane (*The Supreme Court Act of 1874*, s. 18, and Reg. Gen., Oct. 3rd, 1874, r. 16), a fresh trustee not being appointed.—*Re P. Benjamin*, Aug. 17, 1877.

Power and duty
 of trustee.
 See E. R. 1870 108

85. The official trustee shall upon his appointment take or cause to be taken possession of the property of the insolvent and shall cause such of the same as is of a perishable nature to be sold and shall preserve the residue thereof until after the time for the election of a trustee as herein provided shall have elapsed.

As to the trustee being in the position of a receiver, see s. 126.

Property of in-
 solvent divisible
 amongst his
 creditors.
 32 and 33 Vic.
 c. 71, s. 14.

86. When an order has been made adjudging a debtor insolvent the property of the insolvent shall become divisible amongst his creditors in proportion to the debts proved by them in the insolvency.

Description of
 insolvent's
 property
 divisible
 amongst
 creditors.
 32 and 33 Vic.
 c. 71, s. 15.

87. The property of the insolvent divisible amongst his creditors and in this Act referred to as the property of the insolvent shall not comprise the following particulars—

For definition of "property," see s. 4.

- (1.) Property held by the insolvent on trust for any other person. 38 Vic. No. 5.
s. 87.

- (2.) The tools (if any) of his trade and the necessary wearing apparel and bedding of himself his wife and children to a value inclusive of tools and apparel and bedding not exceeding twenty pounds in the whole.

For the provisions of particular statutes.

As to liens on crops, see *The Mercantile Act of 1867* (31 Vic. No. 36), s. 39.

As to policies of insurance, see *The Life Insurance Act of 1879* (43 Vic. No. 8), s. 2.

As to mortgages of live stock, see *The Mercantile Act of 1867* (31 Vic. No. 36), s. 29.

But it shall comprise the following particulars—

As to the power of the court to require conveyance of insolvent's property out of Queensland, see s. 110.

- (3.) All such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by or devolve on him during its continuance.

For definition of "the commencement of the insolvency," see s. 74; liquidation by arrangement, s. 202.

As to lands held under a miner's right, &c., devolving on the trustee, see *The Gold Fields Act of 1874* (38 Vic. No. 11), s. 67.

As to lands under *The Real Property Act of 1861*, see 25 Vic. No. 14, s. 86.

With respect to earnings of the insolvent, more than sufficient to maintain him, the trustee was held entitled to the surplus as profit. Cases
—*Re S. Bromberg*, 1 Q.L.J., 60.

Damages recovered by an insolvent for defamation were not ordered to be paid to his trustee. *Re R. W. Wilson*, 27th September, 1886.

38 Vic. No. 5.
s. 88.

- (4.) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or during its continuance.
- (5.) All goods and chattels being at the commencement of the insolvency in the possession order or disposition of the insolvent by the consent and permission of the true owner of which goods and chattels the insolvent is reputed owner or of which he has taken upon himself the sale or disposition as owner Provided that things in action other than debts due to him in the course of his trade or business shall not be deemed goods and chattels within the meaning of this section Provided also that nothing in this section contained shall affect the validity of any preferable lien on wool or crops or mortgage of sheep or cattle under *The Mercantile Act of 1867* or of any security by way of mortgage over any machinery which may be in the possession of the insolvent for the purpose of being used by him in his trade or business or affect the validity of any bill of sale registered under the said Act before the first day of October one thousand eight hundred and seventy-four.

Certain actions
may be
continued by
insolvent.

88. Notwithstanding anything herein contained an insolvent may continue in his own name and for his own benefit any action commenced by him before adjudication for any personal injury or wrong done to

himself or to any of his family But the whole or any part of the sum recovered in any such action before the close of the insolvency shall if the court so order be paid over by the insolvent to the trustee.

28 Vic. No. 5.
ss. 89-90.

89. The general meeting of creditors for the election of a trustee shall be held at the principal registry or some convenient place near thereto Notice of such meeting shall be given in the prescribed form in the *Gazette* and the prescribed newspapers or such newspapers as the court shall direct in each case and by affixing a copy thereof in some conspicuous place in the principal registry and the district registry nearest to the place where the debtor carried on business or resided at the date of presenting the petition for which purpose a copy of such notice shall if necessary be transmitted by the principal registrar to the district registrar by telegraph.

General meeting
of creditors for
the election of a
trustee.

As to practice on appointment of first meeting at a place other than the principal registry, see rr. 75, 76; as to the registrar's expenses of attending thereat, see s. 187; as to giving notice of the first meeting, see r. 77; as to creditors voting at such meeting, see ss. 90, 91, Rules 29th August, 1878, r. 1; as to proceedings at such meeting, see ss. 92, 93; its adjournment, see s. 95; the calling of a first meeting for the election of a trustee, see ss. 98, 99; as to the report of the appointment of the trustee to the court, see s. 94; as to the occupation of the insolvent being described in full in addition to his name and address, see Reg. Gen., 17th August, 1877, r. 5.

In answer to the registrar, the court expressed an opinion that no person excepting creditors who had proved their debts, or attended for the purpose of proving, had any right to be present at meetings of creditors, unless with the consent of the creditors, the matter being entirely in their option.—*Re The Insolvency Act*, Dec. 18th, 1875.

Case.

90. Any creditor desiring to vote at such meeting must first make preliminary proof that a debt provable under the insolvency is due to him Such proof may be made by affidavit in the prescribed form before the

Creditors must
prove.

Mode of proof.

38 Vic. No. 5. principal registrar or any district court judge police
ss. 91-92. magistrate commissioner for affidavits or district registrar who for such purpose shall have authority to administer oaths and who upon such proof being made to his satisfaction shall if required deliver a certificate thereof to the creditor in the form following or to the like effect—

Certificate of
 proof.

In the insolvent estate of A.B.

C.D. has proved before me a debt of £ in this estate.

Dated at E.F [P.M. or &c.]

As to the creditor bearing the costs, see r. 110; for form of affidavit for proof of debt, see No. 22 and Rules, 29th Aug., 1878, r. 1; as to filing the affidavit, see *ibid*, r. 2.

Mode of
 transmitting
 certificate.

91. Every such certificate shall be filed in the principal registry or in a district registry in which latter case the district registrar shall transmit a copy thereof by telegraph to the principal registry And every such certificate shall entitle the creditor named therein to vote at such general meeting as a creditor in respect of a debt of the amount stated in the certificate.

As to practice on transmission by telegraph, see ss. 37, 38.

Proceedings at
 meeting.
 32 and 33 Vic.
 c. 71, s. 14.

92. The creditors assembled at such general meeting (hereinafter called the first meeting of creditors) shall and may do as follows—

For further provisions as to this meeting, see s. 93; as to appointing the day for its holding, see s. 83; as to the mode of summoning, see s. 89, and rr. 36, 77, providing for the advertisement of the order of adjudication; for form of the notice, see No. 19; for form of the minutes of proceedings at it, see No. 25; and of the list of creditors assembled to be used at it, see No. 26.

- (1.) They may by resolution appoint some fit person resident in Queensland whether a creditor or not to fill the office of trustee of the property of the insolvent at such remuneration as they may from time to time

determine (if any) or they may resolve to ³⁸ Vic. No. 5.
leave his appointment to the committee of s. 92.
inspection hereinafter mentioned.

For supplemental provisions, see s. 101; for the provisions in the rules respecting trustees, see rr. 88-110; as to the report of the appointment of the trustee to the court and the certificate declaring him to be trustee, and his appointment dating from the date thereof, see s. 94, r. 89; for form of the report and certificate of the appointment of a trustee, see Nos. 27, 30; as to gazetting notice of the appointment of the trustee and sending copies to the creditors, see r. 94; for form of this, see No. 31; as to the trustee's remuneration where none is voted, see r. 92; and where he ceases to be trustee prior to obtaining his release, see r. 104; as to no part of the expense of competition for the office of trustee coming out of the estate, see r. 110; as to the official trustee being trustee until a trustee is elected, see s. 84; as to appointment of new trustee if votes improperly given, see s. 98; as to the appointment of more persons than one to the office of trustee, see s. 101 (1); as to empowering trustee to act without consent of the committee of inspection, s. 101 (19).

- (2.) They shall when they appoint a trustee by resolution declare what security (if any) is to be given and to whom by the person so appointed before he enters on the office of trustee.

As to the omission to pass this resolution not invalidating the appointment of the trustee, see r. 90; as to justification of sureties where sureties accepted by the creditors at this meeting being unnecessary, see r. 91; see as to the practice on giving security, rr. 133-140; for form of the bond of the trustee, see No. 29.

- (3.) They may by resolution appoint some other fit person or persons not exceeding five in number and being creditors qualified to vote at such first meeting of creditors or authorised in the prescribed form by creditors so qualified to vote to form a committee of inspection for the purpose of superintending the administration by the trustee of the insolvent's property.

- 38 Vic. No. 5. As to the omission to pass this resolution not invalidating the appointment of the trustee, see r. 90 ; as to the court performing the duties of the committee where none has been appointed, see s. 101 (18).
 s. 93.

Where no committee is appointed the trustee's accounts are to be audited by the accountant in insolvency, Reg Gen., 17th August, 1877, r. 8.

- (4.) They may by resolution give directions as to the manner in which the property is to be administered by the trustee and it shall be the duty of the trustee to conform to such directions unless the court for some just cause otherwise orders.

As to authorising trustee to act without the consent of the committee, see s. 101 (19).

Further provisions as to first meeting of creditors. 32 and 33 Vic. c. 71, s. 16.

93. The first meeting of creditors shall be held in the prescribed manner and subject to the prescribed regulations as to the quorum adjournment of meeting and all other matters relating to the conduct of the meeting or the proceedings thereat.

As to the mode of summoning, see note to last section ; as to the quorum, rr. 78, 79 ; as to the proof of debts, see ss. 90, 91, and generally, rr. 53-61, 101 ; as to proxies, see rr. 70, 71, f. 23.

As to the chairman keeping minutes, and their receipt in evidence, see s. 180 ; for the form of these minutes, see No. 25 ; and of the list of creditors to be used at it, No. 26 ; as to the power of adjournment, see s. 95 ; as to the practice and procedure at such meeting, see rr. 75-87.

Provided that—

Ibid (1).

- (1.) The meeting shall be presided over by the principal registrar or in the event of his being unable to attend through illness or any unavoidable cause by such chairman as the meeting may elect.

Ibid (2).

- (2.) A person shall not be entitled to vote as a

creditor unless at or previously to the meeting he has in manner hereinbefore prescribed proved a debt provable under the insolvency to be due to him. 38 Vic. No. 5.
s. 93.

See last note. As to the cost of proof falling on the creditor, unless otherwise ordered, see r. 110; as to joint creditors proving for the purpose of voting, when one partner is insolvent, see s. 160; as to the description of debts provable, see s. 140; as to the appointment of a new trustee, if votes improperly given, see s. 98.

- (3). No creditor shall vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained. 32 and 33 Vic.,
c. 71, s. 16 (3).

- (4). A secured creditor shall for the purpose of voting be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security and the amount of such balance shall until the security be realised be determined in the prescribed manner. He may however at or previously to the meeting of creditors give up the security to the trustee and thereupon he shall rank as a creditor in respect of the whole sum due to him. Ibid (4).

As to taking accounts of property mortgaged or pledged, and of the sale thereof, see rr. 62-65; as to assessing the amount of the balance, see rr. 84-86; as to the creditor giving up his security and proving for the whole debt, see s. 151 and r. 119.

- (5). Votes may be given either personally or by proxy. Ibid (6).

For the form of a proxy, see No. 23; for the rules relating thereto see rr. 70, 71; as to proxies being exempted from stamp duty, see s. 190.

- (6). An ordinary resolution shall be decided by a majority in value of the creditors present Ibid (7).

38 Vic. No. 5.
s. 94.

personally or by proxy at the meeting and voting on such resolution.

As to the mode of calculating the majority of creditors, see s. 5.

32 and 33 Vic.,
c. 71, s. 16 (8).

- (7.) A special resolution shall be decided by a majority in number and three-fourths in value of the creditors present personally or by proxy at the meeting and voting on such resolution.

As to the mode of calculating the majority of creditors, see s. 5.

Case.

An affidavit should be filed verifying the signatures of the creditors who signed the special resolution.—*Re Kirwan*, March 2nd, 1881.

- (8.) Proxies may be filed in a district registry and transmitted by the district registrar to the principal registry by telegraph.

Evidence of
appointment
of trustee.
32 and 33 Vic.,
c. 71, s. 18.

94. The appointment of a trustee shall be reported to the court and the court upon being satisfied that the requisite security (if any) has been entered into by him shall give a certificate declaring him to be trustee of the insolvency named in the certificate and such certificate shall be conclusive evidence of the appointment of the trustee and such appointment shall date from the date of the certificate. When an official trustee holds the office of trustee or when the trustee is changed a like certificate of the court may be made declaring the person therein named to be trustee and such certificate shall be conclusive evidence of the person therein named being trustee.

For the form of this report, see No. 27; as to the trustee giving security, see s. 92 (2); as to the trustee receiving a certificate, see r. 89; for the form of this certificate, see No. 30; as to gazetting, locally advertising, and sending notice of the appointment to creditors, see r. 94; as to registering, enrolling, and recording it as a conveyance for the purposes of laws requiring registration, enrol-

ment, or recording of conveyance, see s. 101 (9); for form of report and certificate of the appointment of a trustee to fill a vacancy caused by a resignation, see No. 39; as to the appointment of a new trustee if votes improperly given, see s. 98; as to the power of the court at any time to order a meeting for the election of a new trustee, see s. 99; as to the trustee's indemnity, see s. 100; as to serving an office copy of the certificate of confirmation of an elected trustee upon the official trustee, see Reg. Gen., 17th Aug., 1877, r. 3.

The following are the forms of the order made on the report to the court :—

- (1.) Let a certificate be given to _____ of
declaring him to be trustee of this insolvency;
- (2.) The official trustee is entitled to a certificate under s. 94,
declaring him to be trustee.

95. The principal registrar or other chairman may adjourn the first meeting of creditors from time to time and from place to place subject to the directions of the court.

Meeting may be
adjourned.
32 and 33 Vic.,
c. 71, s. 84.

96. On the appointment of a trustee as aforesaid the property of the insolvent shall forthwith be divested from the official trustee and pass to and be vested in the trustee so appointed.

Property to vest
in trustee when
elected.
32 and 33 Vic.,
c. 71, s. 17.

As to the property of the insolvent passing from trustee to trustee and vesting in the trustee for the time being, see s. 101 (7).

97. The expression "trustee" when used in this Act shall include the person for the time being filling the office of trustee whether he be an official trustee or not.

Meaning of
"trustee."
32 and 33 Vic.,
c. 71, s. 17.

98. If the proof of any creditor or creditors who has or have voted at the election of a trustee and without whose vote or votes the trustee would not have been elected shall afterwards be expunged or reduced the court may at any time upon the application of a majority in value of the creditors who have proved order a fresh meeting to be held for the

Appointment
new trustee if
votes given
improperly.

38 Vic. No. 5. election of a new trustee in lieu of the one originally appointed which meeting shall be summoned and held at such place as the court shall think fit and in the same manner as nearly as may be as the first meeting of creditors and if a new trustee is elected at such meeting the court shall give him a certificate declaring him to be such trustee.

See ss. 89, 92, 93 and 94, with the notes thereto; as to property vesting in new trustee, see s. 101 (7).

Court may order meeting for election of new trustee.

99. The court may at any time upon sufficient cause shown order a meeting for the election of a new trustee to be held at such time and place and in such manner as shall to it seem fit.

As to the property vesting in new trustee, see s. 101 (7).

Indemnity to trustees.

100. No trustee appointed under this Act shall be made personally liable by reason only that any of the matters upon which an adjudication of insolvency has been founded is insufficient to support such adjudication or in respect of any receipt by him in his official capacity of any money or negotiable instruments if he shall have dealt with the same as directed by the court or required by this Act or any order made in pursuance thereof And if any action is brought against any trustee under this Act in respect of such money or negotiable instruments any judge of the Supreme Court may upon proof thereof stay or set aside the proceedings in any such action so far as the trustee is concerned and make such order as to costs as he shall think fit.

Provisions as to trustees and committee of inspection.
32 and 33 Vic., c. 71, s. 88.

As to Trustees and Committee of Inspection.

101. The following provisions shall extend and apply to the trustee and committee of inspection—

- (1.) The creditors may if they think fit appoint ^{38 Vic. No. 5.} more persons than one to the office of ^{s. 101.} trustee and where more than one are ^{32 and 33 Vic.,} appointed they shall declare whether any ^{c. 71, s. 83 (1).} act required or authorised to be done by the trustee is to be done by all or any one or more of such persons but all such persons are in this Act included under the term "trustee" and shall be joint tenants of the property of the insolvent. The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee.

As to the meaning of the expression "trustee," see s. 97; for the insolvent's property divisible amongst his creditors, see s. 87

One of two or more trustees in a liquidation cannot act without ^{Case.} the others unless the creditors on appointing them direct that he may.—*Re R. Hughes & Co.*, Q.L.R. pt. 3, 42.

- (2.) If any vacancy occur in the office of trustee ^{ibid (2).} by death resignation or otherwise the creditors in general meeting shall fill up such vacancy and a general meeting for the purpose of filling up such vacancy may be convened by the continuing trustee if there be more than one or by the registrar of the court to which the insolvency is attached on the requisition of any creditor.

For the regulations as to general meetings, see s. 128; for form of notice of meeting to be held on the resignation of a trustee, see No. 37; of the minutes of a meeting for receiving the resignation of a trustee, No. 38; of the report of the appointment of a trustee to fill a vacancy caused by resignation, see No. 39; for the practice as to summoning a meeting by a trustee, see rr. 80, 82, 83; as to the remuneration of a trustee on his resignation, see r. 104; as to the

38 Vic. No. 5. resigning trustee rendering accounts to the registrar, see r. 109; s. 101. and delivering books to the accountant, r. 184.

82 and 88 Vic.,
c. 71, s. 83 (3).

- (3.) If through any cause whatever there is no trustee acting during the continuance of an insolvency the official trustee originally appointed in the insolvency shall be and act as such trustee.

As to the commencement of the insolvency, see s. 74; its close, see s. 166; as to the official trustee not giving security, and his accounts being audited, see r. 111; as to continuing the same attorney, see r. 98.

Ibid (4).

- (4.) The court may upon cause shown suspend or remove any trustee.

Cases.

A trustee removed where his duty and interest conflicted.—*Re Hy. Gralton*, 2 Q.L.J. 23. On an application to remove a trustee proofs were expunged to such an amount that the trustee would not have been elected had not such proofs been allowed at the first meeting. The trustee was removed, and a meeting directed for the appointment of a new trustee.—*M.J., Re R. W. Wilson*, 3rd September, 1886. A trustee was removed on the ground of being the employee of a creditor having an adverse interest.—*C.J., Re Field and de Gruchy*, 29th Sept., 1886. A trustee, the brother of an insolvent, was removed.—*L.J., Re Theodore Wood*, 30th Jan., 1878.

Ibid (4).

- (5.) The creditors may by special resolution at a meeting specially called for that purpose of which the prescribed notice has been given remove the trustee and appoint another person to fill his office and the court shall give a certificate declaring him to be the trustee.

As to summoning this meeting, see r. 103; as to the creditor paying the costs in the first instance, see r. 87; as to the trustee who is removed rendering accounts, see r. 109; as to a special resolution, see ss. 93 (7), 128; as to the practice with respect to the notice of the meeting, see rr. 80, 82, 83; as to the remuneration of the removed trustee, see r. 104.

Case.

Velde Re C. A. Balfour, 2 Q.L.J., 83.

Ibid (5).

- (6.) If a trustee be adjudged insolvent or be or

become resident out of the colony he shall ^{38 Vic. No. 5.}
 cease to be trustee and the registrar shall if s. 101.
 there be no other trustee call a meeting of
 creditors for the appointment of another
 trustee in his place.

See note to (2).

- (7.) The property of the insolvent shall pass <sup>32 and 33 Vic.,
c. 71, s. 83 (6).</sup>
 from trustee to trustee and shall vest in the
 trustee for the time being during his con-
 tinuance in office without any conveyance
 assignment or transfer whatever.

See note to (1).

As to land under "*The Real Property Act of 1861*," see "*The Real Property Act of 1861*" (25 Vic. No. 14), s. 86, *post*.

- (8.) The trustee of an insolvent may sue and be ^{*Ibid* (7).}
 sued by the official name of "the trustee of
 the property of an insolvent"
 inserting the name of the insolvent and by
 that name may hold property of every de-
 scription make contracts sue and be sued
 enter into any engagements binding upon
 himself and his successors in office and do
 all other acts necessary or expedient to be
 done in the execution of his office.
- (9.) The certificate of appointment of a trustee ^{*Ibid* (8).}
 shall for all purposes of any law in force in
 the colony requiring registration enrolment
 or recording of conveyances or assignments
 of property be deemed to be a conveyance
 or assignment of property and may be
 registered enrolled and recorded accord-
 ingly.

38 Vic. No. 5.
s. 101.

32 and 33 Vic.,
c. 71, s. 83 (9).

(10.) All acts and things by this Act authorised or required to be done by or to the registrar may be done within the district of the court having jurisdiction in the insolvency by or to the registrar of that court.

Ibid (10).

(11.) Any member of the committee of inspection may resign his office by notice in writing signed by him and delivered to the trustee.

Ibid (11).

(12.) The creditors may by resolution fix the quorum required to be present at a meeting of the committee of inspection.

As to the number of the quorum where the creditors neglect to fix it, see r. 112; as to the passing of a resolution by the committee of inspection, see r. 113.

Ibid (12).

(13.) Any member of the committee of inspection may be removed by a special resolution at any meeting of creditors of which the prescribed notice has been given stating the object of the meeting.

As to the practice on removal of a member of the committee of inspection, see r. 103.

Ibid (13).

(14.) On any vacancy occurring in the office of a member of the committee of inspection by removal death resignation or otherwise the trustee shall convene a meeting of creditors for the purpose of filling up such vacancy.

See note to (2).

Ibid (14).

(15.) The continuing members of the committee of inspection may act notwithstanding any vacancy in their body and where the number of members of the committee of inspection is for the time being less than five the creditors

may increase that number so that it do not exceed five. 38 Vic. No. 5.
s. 101.

- (16.) No defect or irregularity in the election of a trustee or of a member of the committee of inspection shall vitiate any act *bonâ fide* done by him and no act or proceeding of the trustee or of the creditors shall be invalid by reason of any failure of the creditors to elect all or any members of the committee of inspection. 32 and 33 Vic.,
c. 71, s. 83 (15).

As to formal defects not invalidating proceedings, see s. 179.

- (17.) If a member of the committee of inspection become an insolvent or cease to reside in Queensland his office shall thereupon become vacant. Ibid (16).
- (18.) Where there is no committee of inspection any act or thing or any direction or consent by this Act authorised or required to be done or given by such committee may be done or given by the court on the application of the trustee. Ibid (17).
- (19.) The court may at any time make an order or the creditors may at any time pass a special resolution declaring that all or any of the things by this Act authorised to be done by the trustee with the consent of the committee of inspection may be done by the trustee without such consent And upon such order or resolution being made or passed the provisions of this Act relating to the committee of inspection shall as to the things so authorised cease to apply.

38 Vic. No. 5.
s. 102.

As to Property devolving on Trustee.

Proceeds of sale,
seizure of goods.
82 and 83 Vic.,
c. 71, s. 87.

102. Where the property of any person has been taken in execution in respect of a sum of not less than fifty pounds and sold the sheriff or in the case of a sale under the direction of the district court the bailiff or other officer of the district court shall retain the proceeds of such sale in his hands for a period of fourteen days and upon notice being served on him within that period of an insolvency petition having been presented against such person shall hold the proceeds of such sale after deducting as much thereof as shall be sufficient to defray the costs and expenses of the execution creditor on trust to pay the same to the trustee but if no notice of such petition having been presented be served on him within such period of fourteen days or if such notice having been served the person against whom the petition has been presented is not adjudged an insolvent on such petition or on any other petition of which the sheriff bailiff or other officer has notice he may deal with the proceeds of such sale in the same manner as he would have done had no notice of the presentation of an insolvency petition been served on him.

As to an execution for £50 levied by seizure and sale being an act of insolvency, see s. 44 (6); as to the protection of certain executions, see s. 113 (2); as to executions levied and paid over without notice of the petition, see s. 105.

Cases.

The sheriff having taken possession of goods under a writ of *fi. fa.* for a sum less than £50, the defendant on the following day was adjudicated insolvent; the costs of possession raised the amount due under the writ above £50. On a motion to compel the sheriff to withdraw from possession, and that the goods might be given up for the benefit of the creditors of the insolvent, it was held that this section did not apply.—*Re W. Devine*, Q.L.R. pt. 3, 41.

The words "costs and expenses of the execution creditor" in

this section mean the costs and expenses of the execution creditor 38 Vic. No. 5. after judgment, and they have no relation to the costs of the action. ss. 103-105.
—Davis v. Maclean. *Re Maclean*, 1 Q.L.J. 24.

As to fraudulent warrants of attorney, see *The Common Law Practice Act of 1867* (31 Vic., No. 17), s. 87.

103. Where an insolvent is or has been an officer or clerk or otherwise employed or engaged in the civil service of the Crown or is in the enjoyment of any pension or compensation whatever granted by Act of the Legislature the trustee during the insolvency and the registrar after the close of the insolvency shall receive for distribution amongst the creditors so much of the insolvent's salary emolument or pension as the court upon the application of the trustee thinks just and reasonable to be paid in such manner and at such times as the court with the consent in writing of the chief officer of the department under which the salary emolument pension or compensation is enjoyed directs.

Appropriation of portion of pay of officers to creditors. 32 and 33 Vic., c. 71, s. 89

As to the close of the insolvency, see s. 166; as to the practice under this section, see r. 154; for the form of order, see No. 64.

An appropriation ordered, *Re F. Rawlins*, C.J., 25th Aug., 1880.

104. Where an insolvent is in the receipt of a salary or income other than as aforesaid the court upon the application of the trustee shall from time to time make such order as it thinks just for the payment of such salary or income or of any part thereof to the trustee during the insolvency and to the registrar if necessary after the close of the insolvency to be applied by him in such manner as the court may direct.

Appropriation of portion of salary to creditors. 32 and 33 Vic., c. 71, s. 90.

For the practice under this section, see r. 155; for the form of the notice to the insolvent, see No. 65; for the order, No. 66; as to varying the order on salary ceasing, see r. 156.

105. Every conveyance assignment gift delivery Conveyances, &c., which are

38 Vic. No. 5. or transfer of any property and every dealing with
 s. 105. property which would under this Act be deemed an
 acts of insolvency void against trustee. act of insolvency shall be and are hereby declared to
 be absolutely void against the trustee of the insolvent
 appointed under this Act.

As to acts of insolvency, see s. 44 (1) (2) (6) (7) (8) (13); as to
 fraudulent preferences, ss. 107, 108, 109.

As to fraudulent warrants of attorney and *cognovitis actionem*, see
The Common Law Practice Act of 1867 (31 Vic., No. 17), ss. 87, 88.

Except
 conveyances to
 trustees for the
 creditors of a
 debtor.

Provided that in the case of a conveyance or
 assignment of all the debtor's property for the benefit
 of all his creditors all dealings with such property
 and all acts and things *bonâ fide* made or done by
 the trustee of such conveyance or assignment shall be
 valid and not affected by the adjudication unless
 such trustee had before or at the time of any such
 dealings acts or things notice that proceedings had
 been taken or were about to be taken for the purpose
 of obtaining adjudication of insolvency against the
 debtor.

And executions
 levied and paid
 over without
 notice of
 petition.

Provided further that in the case of an execution
 levied by seizure and sale the proceeds whereof have
 been lawfully paid over under the provisions of this
 Act to the person at whose suit the execution was
 issued such payment shall be valid and the person
 receiving the same shall not be affected by the
 adjudication unless at the time of payment to him he
 had notice that a petition for adjudication had been
 presented against the debtor.

As to an execution for £50 levied by seizure and sale being an
 act of insolvency, see s. 44 (6); as to proceeds of sale of goods
 seized in execution for over £50, see s. 102; as to the protection of
 certain executions, see s. 113 (2).

Case.

See *Re W. Devine*, cited at s. 102.

106. Any settlement of property made by any person not being a settlement made before and in consideration of marriage or made in favor of a purchaser or incumbrancer in good faith and for valuable consideration or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife shall if the settlor becomes insolvent within two years after the date of such settlement be void as against the trustee of the insolvent appointed under this Act and shall also be void as against such trustee if the settlor becomes insolvent at any subsequent time within three years after the date of such settlement unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement.

38 Vic. No. 5.
s. 106.

Avoidance of
voluntary
settlements.
32 and 33 Vic.,
c. 71, s. 91.

Any covenant or contract made by any person in consideration of marriage for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest whether vested or contingent in possession or remainder and not being money or property of or in right of his wife shall upon his becoming insolvent before such property or money has been actually transferred or paid pursuant to such contract or covenant be void against his trustee appointed under this Act.

“Settlement” shall for the purposes of this section include any conveyance or transfer of property.

For definition of “property,” see s. 4.

38 Vic. No. 5.
ss. 107-108.

Avoidance of
fraudulent
preferences.
32 and 33 Vic.,
c. 71, s. 92.

107. Every conveyance assignment gift delivery or transfer of property or charge thereon made every payment made every obligation incurred and every judicial proceeding taken or suffered by any debtor unable to pay his debts as they become due from his own moneys in favor of any creditor or any person in trust for any creditor with a view of giving such creditor a preference over the other creditors shall if a petition for adjudication of insolvency be presented against such debtor within six months after the date of making taking paying or suffering the same and adjudication of insolvency be made on such petition be deemed fraudulent and void as against the trustee of the insolvent appointed under this Act but this section shall not affect the rights of a purchaser payee or incumbrancer in good faith and for valuable consideration Provided that pressure by a creditor shall not be sufficient to exempt any transaction from the operation of this section.

See next section and ss. 112, 113.

Cases.

Examples of cases amounting to fraudulent preferences under this section and ss. 108, 109, and others which failed to do so.—*Re Wildash and Kenneth Hutchinson*, Q.L.R. pt. 2, 47; *Normanby Copper Mining Company v. Corfield*, Q.L.R. pt. 3, 32. *Re Andrew Todd, Lilley, C.J.*, November 16th, 18th, 1885.

Certain
conveyances,
&c., to be
deemed
fraudulent
preferences.

108. Every conveyance assignment gift delivery or transfer of property or charge thereon made executed or given by any debtor unable to pay his debts as they become due from his own moneys in favour of any creditor or any person in trust for any creditor not being for a reasonable and sufficient consideration given at the time of making or giving the same shall if a petition for adjudication of insolvency be presented against such debtor within six months after

the date of making executing or giving the same and adjudication of insolvency be made thereon be deemed a fraudulent preference and shall be void as against the trustee of the insolvent under this Act and shall not be available to the creditor as against the trustee and the property conveyed transferred or charged or the full value thereof shall be recoverable by the trustee from such creditor or any person who shall hold the same in trust for such creditor or any person to whom such creditor or person holding the same in trust shall have conveyed transferred delivered or mortgaged the same if such person had at the time of such conveyance transfer delivery or mortgage notice of such fraudulent preference.

38 Vic. No. 5.
ss. 109.

See ss. 112, 113.

Assignment of all a debtor's property, what a sufficient exception, Cases. or fair equivalent to protect the same.—*Re J. Donaldson*, 1 Q.L.J. 105.

Re Tye ex parte Miles, 2 Q.L.J. 39.

109. Every conveyance assignment gift delivery or transfer of property or charge thereon made executed or given by any debtor unable to pay his debts as they become due from his own moneys and the effect whereof is to defeat or delay the creditors of such debtor or to diminish the property to be divided amongst his creditors shall if a petition for adjudication of insolvency be presented against the debtor within six months thereafter be deemed fraudulent and void as against the petitioning creditor and if adjudication of insolvency be made on such petition shall also be deemed fraudulent and void as against the trustee in the insolvency unless in either case it shall be proved that such conveyance assignment gift

Certain conveyances, &c., to be deemed fraudulent unless bona fides is proved. Cases.

38 Vic. No. 5. delivery transfer or charge was in fact made in good
ss. 110-111. faith proof whereof shall be upon the party alleging
the validity of the transaction Provided that pressure
by a creditor shall not be sufficient to protect any
such transaction nor shall any such transaction
acquire any validity by reason only that it was made
or done in pursuance of an antecedent agreement.

See ss. 112, 113.

Cases.

Re Haupt, ex parte Kinre, Nov. 10th, 1876; *re Tye, ex parte Miles*, 2 Q.L.J. 39.

Court may
require
conveyance of
property out of
Queensland.

110. When any insolvent has any property elsewhere than in Queensland the court may upon the application of the trustee order the insolvent to execute all such deeds instruments and writings and do and concur in all such acts matters and things as may be necessary to enable the trustee to realise or make available the whole or such part thereof or of the proceeds thereof as the court may think proper for distribution amongst the creditors of the insolvent.

Payment and
delivery of
money by agents
to trustees.
32 and 33 Vic.,
c. 71, s. 98.

111. Any banker attorney or agent of an insolvent shall pay and deliver to the trustee all moneys and securities in his possession or power as such banker attorney or agent unless he be by law entitled to retain the same as against the insolvent or the trustee. If he do not he shall be guilty of a contempt of court and may be punished accordingly on the application of the trustee.

No lien on
papers.

Provided that no person shall be entitled as against the trustee to withhold possession of any books of account papers or writings relating to the estate or to claim any lien thereon.

As to contempt of court, see s. 122; for the practice, see rr. 152,

153; for form of application by trustee for committal, see No. 70; 38 Vic. No. 5. affidavit in support, No. 72; notice of application for committal, s. 112. No. 75; order for, No. 78; warrant for, No. 80; order of discharge, --- No. 81.

112. Nothing in this Act contained shall render invalid—

Protection of
certain
transactions
with insolvent.
32 and 33 Vic.,
c. 71, s. 94.

For further protected matters, see note to s. 113.

- (1.) Any payment made in good faith and for value received to any insolvent before the date of the order of adjudication by a person not having at the time of such payment notice of any act of insolvency committed by the insolvent and available against him for adjudication.

As to the date of the order of adjudication, see ss. 63, 70; as to what are acts of insolvency, see s. 44.

- (2.) Any payment or delivery of money or goods belonging to an insolvent made to such insolvent by a depositary of such money or goods before the date of the order of adjudication who had not at the time of such payment or delivery notice of any act of insolvency committed by the insolvent and available against him for adjudication.

See note to last paragraph.

- (3.) Any contract or dealing with any insolvent made in good faith and for valuable consideration before the date of the order of adjudication by a person not having at the time of making such contract or dealing notice of any act of insolvency committed by the insolvent and available against him for adjudication.

38 Vic. No. 5. See note to first paragraph.

s. 113.

Case.

Protection of
certain
transactions
entered into by
or in relation to
the property of
the insolvent.
32 and 33 Vic.,
c. 71, s. 96.

When the dealing itself constitutes the act of insolvency, s. 44 (13), the party has notice of the act of insolvency.—*Re A. J. Chetwynd*, March 8th, 1875.

113. Subject and without prejudice to the provisions of this Act relating to the proceeds of the sale and seizure of goods and to the provisions of this Act avoiding certain settlements and avoiding on the ground of their constituting fraudulent preferences or otherwise certain conveyances charges payments and judicial proceedings the following transactions by and in relation to the property of an insolvent shall be valid notwithstanding any prior act of insolvency—

As to other protected transactions, see as to the proceeds of the seizure and sale of goods, s. 102; dealings with property being all a debtor's property assigned for all his creditors, s. 105; executions levied and paid over without notice of petition, see s. 105; voluntary settlement, s. 106; fraudulent preferences, ss 107, 108, and conveyances, s. 109.

As to the property divisible, see s. 87; acts of insolvency, s. 44; property, s. 4.

Ibid (1).

(1.) Any disposition or contract with respect to the disposition of property by conveyance transfer charge delivery of goods payment of money or otherwise howsoever made by any insolvent in good faith and for valuable consideration before the date of the order of adjudication with any person not having at the time of the making of such disposition of property notice of any act of insolvency committed by the insolvent and available against him for adjudication.

As to the date of the order of adjudication, see ss. 63, 70; see note to section.

(2. .

(2.) Any execution or attachment against the

property of the insolvent executed in good faith by seizure and sale before the date of the order of adjudication if the person on whose account such execution or attachment was issued had not at the time of the same being so executed by seizure and sale notice of any act of insolvency committed by the insolvent and available against him for adjudication.

38 Vic. No. 5.
s. 114.

As to executions levied and paid over without notice of the petition, see s. 105; see previous notes on this section.

As to Discovery of Insolvent's Property.

114. The court may on the application of the trustee or any creditor at any time after an order of adjudication has been made against an insolvent order the insolvent or his wife or any person whatever known or suspected to have in his possession any of the estate or effects belonging to the insolvent or any person supposed to be indebted to the insolvent or any person whom the court may deem capable of giving information respecting the insolvent his trade dealings or property to attend before it or before any other court of insolvency or before any police magistrate at a time or times to be specified in the order and may thereby also require any such person to produce any document in his custody or power relating to the insolvent his dealings or property and if any person so summoned after having been tendered a reasonable sum for expenses refuses to come before the examining court at the time appointed or refuses to produce such documents having no lawful impediment made known to such court at the time of its sitting and allowed by

Power of court to summon persons before it suspected of having property of insolvent.
32 and 33 Vic., c. 71, s. 96.

38 Vic. No. 5. it such court may by warrant addressed to any
s. 115. constable or prescribed officer cause such person to
 be apprehended and brought up for examination.

By *The Insolvency Act Amendment Act of 1876* (40 Vic., No. 12), s. 1, orders on persons to attend before the police magistrate at Bowen and Brisbane are not to be made, and such magistrates are not to have jurisdiction under this section. See this Act, *post*.

For the practice under this section, see rr. 141-146; as to transmitting the evidence to the court, see s. 182; as to reducing the evidence into writing and its signature, see r. 166; as to shorthand writer, see s. 183, r. 167; by r. 146, the application must be in writing, and state the grounds and verify them when it is not made on behalf of the trustee; for form of subpoena, see No. 62; summons, No. 63; warrant to apprehend person summoned, No. 82.

As to property divisible, see s. 87. The allowances to the witnesses are the same as at common law, see Table I. As to new practice under the "Supreme Court Rules" applying, see O. LIX., r. 1a.

As to lien on papers, see proviso to s. 111; as to criminating questions, see s. 115; as to reward for discovery of concealed property, see s. 120; as to power to commit summarily insolvent guilty of offence, see s. 216; as to arrest of insolvent failing to attend examinations, see s. 72 (3).

As to service in writing of notice of the proceeding upon the trustee, see Reg. Gen., 17th August, 1877, r. 4, *post*.

Cases.

A party interested in the proceedings ought not to be excluded by the court from hearing the examination of witnesses ordered to attend and give evidence respecting the estate and property of the insolvent.---*Re J. and G. Harris*, Q.L.R. pt. 1, 70.

The order under this section should provide that the examination be continued with as few adjournments as possible, and that if any adjournment takes place before any sitting has lasted three hours the trustee is to report the matter to the judge, subject to which the police magistrate to have power to adjourn.

Question to be
 answered
 although
 criminating.

115. No question put to any insolvent on any examination under this Act shall be deemed unlawful by reason only that the answer thereto may expose him to punishment in respect of some one or more acts or things by this Act made punishable as misdemeanors.

This section does not operate so as to render unlawful questions put to an insolvent under examination under s. 114, and which tend to criminate him of a felony, and if he is afterwards tried on a criminal charge his answers to such questions may be given in evidence against him.—*Reg. v. King*, Q.L.R. pt. 1, 73. 38 Vic. No. 5. ss. 116-118.

116. The examining court may examine or cause to be examined upon oath either by word of mouth or by written interrogatories any person so brought before it in manner aforesaid concerning the insolvent his dealings or property and if any such person shall refuse to answer to the satisfaction of the examining court such court may commit him to prison for any period not exceeding six calendar months as in its discretion shall seem just. Examination of parties by court. 32 and 33 Vic., c. 71, s. 97.

See note to s. 164.

117. If any person on his examination before the court or examining court shall appear to be indebted to the insolvent the court may on the application of the trustee order him to pay to the trustee at such time and in such manner as to the court seems expedient the amount appearing to be due or any part thereof either in full discharge of the whole amount in question or not as the court thinks fit with or without costs of the examination. Order of court for payment of amount admitted on examination. 32 and 33 Vic., c. 71, s. 98.

For form of this order, see No. 35; of writs of *f. fa.*, Nos. 109, 110, 111; of writs of *elegit*, Nos. 113, 114.

Possession of Property.

118. Any person acting under warrant of the court may seize and attach any property of the insolvent divisible among his creditors under this Act and in the insolvent's custody or possession or in that of any other person and with a view to such seizure or attachment may break open any house building or room of the insolvent's where the insolvent is Seizure of property of insolvent. 32 and 33 Vic., c. 71, s. 99.

38 Vic. No. 5. supposed to be or any building or receptacle of the
ss. 119-120.

insolvent where any of his property is supposed to be
And where the court is satisfied that there is reason
to believe that property of the insolvent is concealed
in a house or place not belonging to him the court
may if it thinks fit grant a search warrant to any
constable or prescribed officer of the court who may
execute the same according to the tenor thereof.

As to the warrant being addressed to such person as the court
may direct, see r. 150; for form of search warrant, see No. 59; of
warrant of seizure, No. 60; for the practice on writs of execution,
see rr. 168-171; as to property divisible, see s. 87; as to attach-
ment, see s. 119; as to the reward for the discovery of concealed
property, see s. 120.

Case.

An order was made under this section in *re Crosby*, May 12th,
1882.

Attachment.

119. The person making any such seizure or attach-
ment shall leave with the person in whose possession
any such property is attached a copy of the warrant
together with an inventory of such property having
subjoined thereto a notice that such property has been
attached by him.

Custody.

Any property so attached may be removed or
secured on the premises by sealing up any repository
room or closet and some person may be left on the
premises in custody thereof.

Reward for
discovery of
concealed
property.

120. Any person who shall make discovery or give
to the trustee information which shall lead to the dis-
covery of any concealed property of an insolvent not
before come to the knowledge of the trustee shall be
entitled to such reward not exceeding one-tenth of the
value of the property so discovered as the court may
allow.

Post Letters.

38 Vic. No. 5.

ss. 121-122.

121. The court upon the application of the trustee may from time to time order that for such time as the court thinks fit not exceeding three months from the date of the order of adjudication post letters addressed to the insolvent at any place or any of the places mentioned in the order shall be re-directed sent or delivered by the Postmaster-General or the officers acting under him to the trustee or otherwise as the court directs and the same shall be done accordingly.

Post letters
addressed to
insolvent.
32 and 33 Vic.,
c. 71, s. 85.

As to the date of the order of adjudication, see ss. 63, 70; for form of order, see No. 83.

PART VI.—ADMINISTRATION OF PROPERTY.

General Provisions Affecting Administration of Property.

122. The insolvent shall to the utmost of his power aid in the realization of his property and the distribution of the proceeds amongst his creditors. He shall on or before the day appointed by the order of adjudication for that purpose deliver to the trustee the statement in the sixty-ninth section hereof mentioned and shall also give such inventory of his property such list of his creditors and debtors and of the debts due to and from them respectively submit to such examination upon oath or otherwise by the trustee in respect of his property or his creditors (for which purpose the trustee shall have power to administer oaths) attend such meetings of his creditors wait at such times on the trustee execute such powers of attorney conveyances deeds and instruments and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst

Conduct of
insolvent.
32 and 33 Vic.,
c. 71, s. 19.

38 Vic. No. 5. his creditors as may be reasonably required by the
s. 123. trustee or may be prescribed by rules of court or be directed by the court by any special order or orders made in reference to any particular insolvency or made on the occasion of any special application by the trustee or any creditor.

As to the power of the court to require conveyance of insolvent's property out of Queensland, see s. 110; as to the insolvent's property divisible amongst his creditors, see s. 87; as to the verification of the insolvent's statement of affairs, see r. 73; as to the contents of this statement in partnership cases, see r. 73; for its form, see No. 28.

If the insolvent wilfully fail to perform the duties imposed on him by this section or if he fail to deliver up possession to the trustee of any part of his property which is divisible amongst his creditors under this Act and which may for the time being be in the possession or under the control of such insolvent he shall in addition to any other punishment to which he may be subject be guilty of a contempt of court and may be punished accordingly.

As to the practice on applications to commit, see rr. 152, 153; as to the prison, and duty of the gaoler, s. 26; for form of application by trustee for committal, No. 70; affidavit in support, No. 71; of notice of the application, No. 74; the order of committal, No. 77; warrant of committal, No. 80; order for discharge, No. 81.

Conduct of
 trustee.
 32 and 33 Vic.
 c. 71, s. 20.

123. The trustee shall in the administration of the property of the insolvent and in the distribution thereof amongst his creditors have regard to any directions that may be given by resolution of the creditors at any general meeting or by the committee of inspection and any directions so given by the creditors at any general meeting shall be deemed to override any directions given by the committee of inspection.

The trustee shall call a meeting of the committee of 36 Vic. No. 5.
inspection once at least every two months when they ss. 124-125.
may audit his accounts and determine whether any or
what dividend is to be paid He may also call special
meetings of the committee as he thinks necessary.

Meetings of
committee.

As to the insolvent's property divisible amongst his creditors, see
s. 87.

As to the trustees submitting the record and estate book, with a
copy of the latter, to the committee at each of the meetings, see r.
180; as to audit of the estate book, r. 181; as to transmission of
copy and other documents to the accountant, r. 182; as to the
course where there is no committee, see s. 101 (18); as to the
trustees employing solicitors and agents, see s. 135.

The creditors may allow the trustee of an insolvent estate to go Case.
out of the colonies to realise the estate, and may grant him his
expenses incurred therein if it be expedient that he should do so.—
Re C. Wilson, 1 Q.L.J. 45.

124. Subject to the provisions of this Act and to Trustee may
such directions as aforesaid the trustee shall exercise manage at
his own discretion in the management of the estate discretion, &c.
and its distribution amongst the creditors The trustee 32 and 33 Vic.,
shall from time to time summon general meetings of c. 71, s. 20.
the creditors for the purpose of ascertaining their
wishes. Meetings of
creditors.

As to trustees and their duties, see rr. 88-110; as to general
meetings subsequent to the first meeting, see s. 123.

See *re C. Wilson*, 1 Q.L.J. 45, cited under s. 123.

Case.

125. The insolvent or any creditor debtor or other Appeal from
person aggrieved by any act or decision of the trustee trustee.
may appeal to the court and the court may confirm 32 and 33 Vic.,
reverse or modify the act or decision complained of c. 71, s. 20.
and make such order in the premises as it thinks just
The court may from time to time during the con- Court may
tinuance of an insolvency summon general meetings summon
of the creditors for the purpose of ascertaining their meetings.

38 Vic. No. 5. wishes and may if the court thinks fit direct the
ss. 126-127. registrar to preside at such meetings.

As to the commencement of the insolvency, see s. 74 ; its close, s. 166 ; for the practice on summoning such general meetings, see r. 7 ; for the form of the order for, see No. 20 ; for the list of creditors to be used at it, see No. 26 ; as to the costs of summoning, when summoned at the instance of a person other than the trustee, see r. 87 ; as to service of notice in writing of the proceedings upon the trustee, see Reg. Gen., 17 Aug., 1877, r. 4, *post*.

Trustee to be in
 position of a
 receiver.
 32 and 33 Vic.,
 c. 71, s. 20.

126. The trustee shall in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent be in the same position in all respects as if he were a receiver of such property appointed by the Supreme Court in its equitable jurisdiction and the court may on his application enforce such acquisition or retention of property accordingly.

As to the insolvent's property divisible amongst his creditors, see s. 87.

Trustee may
 apply to court
 for advice or
 direction.
 E.R. 1870, 112.

127. The trustee may upon a statement in writing verified by affidavit apply to the court for and obtain its opinion advice or direction on any question respecting the management of the insolvent estate or his duty in connection therewith Notice of any such application shall be given to all persons interested or such of them as the court shall direct and any trustee acting upon the opinion advice or direction of the court so obtained shall be deemed to have acted rightly in respect of the subject-matter of the application provided that he shall not have been guilty of any wilful fraud concealment or misrepresentation in obtaining such opinion advice or direction.

For the practice, see r. 95 ; as to costs, see r. 99 ; for form of application for directions, see No. 44, Order No. 45.

A case where advice was given.—*Re Gray and Co.*, Q.L.R. pt. 3, 38 Vic. No. 5. ss. 128-129.

Advice was given as to the rights of creditors under a second insolvency, the first not having been closed.—*Re J. Macpherson*, 1 Q.L.J. 104. Cases.

Advice was given as to the discontinuance of an action.—*Re P. and J. Graham*, June, 1880.

128. The provisions of this Act with respect to the first general meeting of creditors shall apply to any subsequent general meeting of creditors in an insolvency with this exception that subsequent meetings of creditors may be summoned by the trustee or by a member of the committee of inspection and that such meetings may (unless otherwise directed by the court in the case of meetings summoned by the court) be presided over by any person chosen by the creditors assembled at such meeting and that any creditor whose debt has been proved or the value of whose debt has been ascertained at or subsequently to such first meeting shall be allowed to be present and to vote thereat.

Regulations as to general meetings of creditors subsequent to first meeting. 32 and 33 Vic., c. 71, s. 21.

As to the court summoning meetings, see s. 125 ; as to first meetings, see ss. 89, 92, 93, rr. 75-87 ; as to evidence of proceedings at meetings, see s. 180 ; as to proof of debts, see s. 140, rr. 53-61.

Dealings with Insolvent's Property.

129. Where any portion of the property of the insolvent consists of stock shares in ships shares or any other property transferable in the books of any company office or person the right to transfer such property shall be absolutely vested in the trustee to the same extent as the insolvent might have exercised the same if he had not become insolvent.

Possession of property by trustee. 32 and 33 Vic., c. 71, s. 22.

Where any portion of the property of the insolvent consists of things in action any action suit or other

35 Vic. No. 3. proceeding for the recovery of such things instituted
s. 130. by the trustee shall be instituted in his official name as in this Act provided and such things shall for the purpose of such action suit or other proceeding be deemed to be assignable in law and to have been duly assigned to the trustee in his official capacity.

The trustee shall as soon as may be take possession of the deeds books and documents of the insolvent and all other property capable of manual delivery.

The trustee shall keep in such manner as rules of court shall direct proper books of account showing his receipts and disbursements and dealings with the estate and also books in which he shall from time to time make or cause to be made entries or minutes of proceedings at meetings and of such other matters as rules of court shall direct and any creditor of the insolvent may subject to the control of the court personally or by his agent inspect such books.

As to the insolvent's property divisible amongst his creditors, see s. 87; as to the vesting in the trustee, see ss. 84, 96, 101 (7).

For the provisions of "*The Merchants Shipping Act of 1854*," relating to the transmission of interests in ships by insolvency, see ss. 58, 59, 72, 74; as to the official name of a trustee, see s. 101 (8); as to no person being entitled to withhold possession as against the trustee of books and writings relating to the estate, see s. 111; as to the record and estate book, see rr. 177-180.

Disclaimer as to
 onerous
 property.
 32 and 33 Vic.,
 c. 71, s. 23.

130. When any property of the insolvent acquired by the trustee under this Act consists of land of any tenure burdened with onerous covenants of unmarketable shares in companies of unprofitable contracts or of any other property that is unsaleable or not readily saleable by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money the trustee notwithstanding

he has endeavoured to sell or has taken possession of such property or exercised any act of ownership in relation thereto may by writing under his hand disclaim such property and upon the execution of such disclaimer the property disclaimed shall if the same is a contract be deemed to be determined from the date of the order of adjudication and if the same is a lease be deemed to have been surrendered on the same date and if the same be shares in any company be deemed to be forfeited and to have reverted to the company on and from that date and if any other species of property it shall revert to the person entitled on the determination of the estate or interest of the insolvent but whether there shall be any person in existence so entitled or not in no case shall any estate or interest therein remain in the insolvent.

38 Vic. No. 5.
s. 131.

As to the limitation of the trustee's right of disclaimer, see s. 131.

Any person interested in any disclaimed property may apply to the court and the court may upon such application order possession of the disclaimed property to be delivered up to him or make such other order as to the possession thereof as may be just Any person injured by the operation of this section other than a company shares wherein are forfeited under this section shall be deemed a creditor of the insolvent to the extent of such injury and may accordingly prove the same as a debt under the insolvency.

Remedies for
persons affected.

As to the trustees estimating the value of any liability made provable, not bearing a certain value, see s. 140.

131. The trustee shall not except as hereinafter provided be entitled to disclaim any property in pursuance of this Act in cases where an application in writing has been made to him by any person interested

Limitation of
time.
32 and 38 Vic.,
c. 71, s. 24.

38 Vic. No. 5. in such property requiring such trustee to decide
s. 132. whether he will disclaim or not and the trustee has
 for a period of not less than twenty-eight days after
 the receipt of such application or such further time as
 may be allowed by the court declined or neglected to
 give notice whether he disclaims the same or not
 Provided that if the insolvent shall at the date of
 adjudication be the lessee of any premises the trustee
 instead of disclaiming immediately may elect to retain
 the same for a period not exceeding three months and
 not being later than the expiration of the lease and at
 the end of such period may disclaim the same.

Proviso in case
 of lease.

Power of trustee
 to deal with
 property.
 82 and 83 Vic.,
 c. 71, s. 25.

132. Subject to the provisions of this Act the
 trustee shall have power to do the following things—

Ibid (1).

(1.) To receive and decide upon proof of debts in
 the prescribed manner.

As to what are provable debts, see s. 140; as to the mode of
 proof generally, see rr. 53, 54; for form of affidavit for proof of
 debt with or without security, see No. 22; as to proof by a com-
 pany or body corporate, see r. 55; for form of affidavit of proof of
 debt by the agent of a company, see No. 24; as to the reception of
 and decision upon proof of debt, see rr. 56-59; as to proof upon
 joint and separate debts, see r. 60; as to allowing rebate, see r. 61;
 as to a trustee filing the proof with the registrar with a memorandum
 allowing or disallowing it, see r. 101; as to the right of a creditor
 who has not proved his debt before a declaration of dividend, see
 s. 154; as to the creditor bearing the costs of making proof of his
 debt, see r. 110.

Ibid (2).

(2.) To carry on the business of the insolvent so
 far as may be necessary for the beneficial
 winding-up of the same.

Ibid (5).

(3.) To exercise any powers the capacity to
 exercise which is vested in him under this
 Act and to execute all powers of attorney

deeds and other instruments expedient or necessary for the purpose of carrying into effect the provisions of this Act. 32 and 33 Vic. No. 5. s. 133.

As to these powers, see s. 87 (4).

- (4.) To sell all the property of the insolvent (including the goodwill of the business if any and the book debts due or growing due to the insolvent) by public auction or private contract with power if he thinks fit to transfer the whole thereof to any person or company or to sell the same in parcels. 32 and 33 Vic., c. 71, s. 25 (6).

As to the power of the court to require conveyance of insolvent's property out of Queensland, see s. 110; as to the insolvent's property divisible amongst his creditors, see s. 87; as to a trustee, an auctioneer, not acting as such in the sale, see r. 102.

- (5.) To give receipts for any money received by him which receipt shall effectually discharge the person paying such moneys from all responsibility in respect of the application thereof. Ibid (7).
- (6.) To prove rank claim and draw a dividend in the matter of the insolvency of any debtor of the insolvent. Ibid (8).
- (7.) To deal with any property to which the insolvent is beneficially entitled as tenant in tail in the same manner as the insolvent might have dealt with the same. Ibid (4).

133. The trustee may with the sanction of the committee of inspection do all or any of the following things— Power of trustee to compromise, &c. 32 and 33 Vic., c. 71, s. 27.

As to the trustee obtaining the sanction of the court before doing any of these things where there is no committee, see s. 101 (18).

38 Vic. No. 5.
s. 133.

32 and 33 Vic.,
c. 71, s. 27 (1).

- (1.) Mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts.

As to the insolvent's property divisible amongst his creditors, see s. 87.

To allow
insolvent to
manage
property.
32 and 33 Vic.,
c. 71, s. 26.

- (2.) Appoint the insolvent himself to superintend the management of the property or of any part thereof or to carry on the trade of the insolvent (if any) for the benefit of the creditors and in any other respect to aid in administering the property in such manner and on such terms as the creditors direct.

As to allowance to the insolvent for service, see s. 149.

32 and 33 Vic
c. 71, s. 25 (3).

- (3.) Bring or defend any action suit or other legal proceeding relating to the property of the insolvent.

As to trustee's designation in suing and being sued, see section 101 (8); as to when actions do not abate on insolvency, see 31 Vic., No. 14, s. 24; as to the trustee employing a solicitor, and if he is a solicitor being paid for his services, see s. 135; as to the costs of the trustee's application to the court, see r. 99; as to his not being allowed any costs till they have been taxed, see r. 97.

32 and 33 Vic,
c. 71, s. 27 (2).

- (4.) Refer any dispute to arbitration compromise all debts claims and liabilities whether present or future certain or contingent liquidated or unliquidated subsisting or supposed to subsist between the insolvent and any debtor or person who may have incurred any liability to the insolvent upon the receipt of such sums payable at such times and generally upon such terms as may be agreed upon.

Ibid (3).

- (5.) Make such compromise or other arrangement

as may be thought expedient with creditors ^{38 Vic. No. 5.}
 or persons claiming to be creditors in respect s. 134.
 of any debts provable under the insolvency.

As to debts provable, see s. 140.

- (6.) Make such compromise or other arrangement <sup>32 and 33 Vic.,
c. 71, s. 25 (4).</sup>
 as may be thought expedient with respect to
 any claim arising out of or incidental to the
 property of the insolvent made or capable of
 being made on the trustee by any person or
 by the trustee on any person.

As to the insolvent's property divisible amongst his creditors, see
 s. 87.

- (7.) Divide in its existing form amongst the ^{ibid (5).}
 creditors according to its estimated value
 any property which from its peculiar nature
 or other special circumstances cannot advan-
 tageously be realized by sale.
- (8.) Employ a shorthand writer to take notes of
 the proceedings at any meeting of creditors
 or of any examination held under this Act.

As to appointing shorthand writer, see s. 183, r. 167.

The sanction given for the purposes of this section
 may be a general permission to do all or any of the
 above-mentioned things or a permission to do all or
 any of them in any specified case or cases.

134. The trustee may with the sanction of a special <sup>Power of trustee
to accept
composition or
general scheme
of management.
32 and 33 Vic.,
c. 71, s. 28.</sup>
 resolution of the creditors assembled at any meeting
 of which the prescribed notice has been given specify-
 ing the object of such meeting accept any composition
 offered by the insolvent or assent to any general
 scheme of settlement of the affairs of the insolvent

38 Vic. No. 5. upon such terms as may be thought expedient and
s. 134. with or without a condition that the order of adjudication is to be annulled subject nevertheless to the approval of the court to be testified by the judge of the court signing the instrument containing the terms of such composition or scheme or embodying such terms in an order of the court.

Where the annulling the order of adjudication is made a condition of any composition with the insolvent or of any general scheme for the liquidation of his affairs the court if it approves of such composition or general scheme shall annul the adjudication on an application made by or on behalf of any person interested and the adjudication shall be annulled from and after the date of the order annulling the same.

The provisions of any composition or general scheme made in pursuance of this Act may be enforced by the court on a motion made in a summary manner by any person interested and any disobedience of the order of the court made on such motion shall be deemed to be a contempt of court. The approval of the court shall be conclusive as to the validity of any such composition or scheme and it shall be binding on all the creditors so far as relates to any debts due to them and provable under the insolvency.

As to a special resolution, see s. 93 (7); for form of notice of meeting to authorise the trustees to accept a composition, see No. 46, r. 7; as to staying proceedings where negotiations for a liquidation are pending, see s. 177 (11); for form of the order to stay, see No. 47; for form of the application to annul, see No. 48; of order, No. 49; of notice in *Gazette* and paper, No. 50; as to the consequences of annulling the adjudication, see s. 178; as to annulling

on payment or release of debts, see s. 163; for the form of the appli- 38 Vic. No. 5.
cation to enforce the provisions in composition, see No. 67; of ss. 135-136.
affidavit in support, No. 68; of order, No. 69; as to applications
for commitment, see rr. 152, 153; for form of application, see No.
70; of affidavit, No. 73; of notice of, No. 76; of order for com-
mittal, No. 79; of warrant of, No. 80; of order of discharge, No. 81.

In re C. Droughton, December 7th, 1881, the following order was Case.
made: Order—Adjudication to be annulled, and let all the property
of the insolvent not disposed of by the trustee revert to the insol-
vent for all his estate and interest therein.

135. The trustee may from time to time employ a Trustee may
solicitor or other agent and where the trustee is employ solicitor
himself a solicitor he may contract to be paid a and if a solicitor
certain sum by way of percentage or otherwise as a may be paid for
remuneration for his services as trustee including all his services.
professional services and any such contract shall 32 and 33 Vic.,
notwithstanding any law to the contrary be lawful. c. 71, s. 29.

As to costs of application by the trustee to the court, see r. 99;
as to his not being allowed any costs till they have been taxed, see
r. 97; as to change of solicitor when official trustee becomes trustee,
see r. 98.

136. The trustee shall pay all sums from time to Trustee to pay
time received by him into such bank and to such moneys into
account as the majority of the creditors in number bank.
and value at any general meeting shall appoint and 32 and 33 Vic.,
failing such appointment into such bank and to such c. 71, s. 30.
account as the court may appoint and if after either
of such appointments he at any time keep in his
hands any sum exceeding fifty pounds for more than
ten days he shall unless he can prove to the satisfac-
tion of the court that his reason for retaining the
money was sufficient be subject to the following
liabilities that is to say—

As to the bank appointed by the court, see r. 93 and r. 7 of the
Reg. Gen., 17th Aug., 1877, also Reg. Gen., 12th Dec., 1879, *post*.
These rules also provide for the mode of keeping the account.

38 Vic. No. 5.
ss. 137-138.

- (1.) He shall pay interest at the rate of twenty pounds per centum per annum on the excess of such sum above fifty pounds as he may retain in his hands.
- (2.) He shall on the application of any creditor be dismissed from his office by the court and shall have no claim for remuneration and shall be liable to any expenses to which the creditors may be put by or in consequence of his dismissal.

Where no committee of inspection is appointed, the trustee's accounts are to be audited by the accountant in insolvency, Reg. Gen., 17th Aug., 1877, r. 8, *post*.

Power to order
sale in case of
equitable
mortgage.

137. If any debt or sum of money due to or by an insolvent be charged upon any land by way of equitable mortgage the court may upon the application of the trustee or other person being such equitable mortgagee and upon notice to all parties interested make an order for the sale of the land so subject to such equitable mortgage.

As to taking accounts of property mortgaged or pledged, and of the sale thereof, see rr. 62-65; as to mortgagee bidding at the sale, see s. 139.

Power of trustee
to redeem before
time appointed.

138. If the insolvent has made any conveyance assurance delivery deposit or pledge of any deeds writings goods or chattels subject to a condition for redemption or re-delivery on payment of money or otherwise at a future day which has not arrived at the date of presenting the petition the trustee may before the time appointed for such redemption has arrived make payment or tender of money or other performance according to such condition as fully as the insolvent might have done at the time so

appointed and upon such tender or payment shall be entitled to have and receive the deeds writings goods or chattels so conveyed assured delivered deposited or pledged and to recover the same from the person to whom they were so conveyed assured delivered deposited or pledged or any other person having notice of such condition in whose possession they may be.

38 Vic. No. 5.
ss. 139-140.

This section is similar to *The Bankruptcy Act of 1849* (12 and 13 Vic. c. 106), s. 149.

139. Any mortgagee may with the leave of the court first obtained bid at the sale of any mortgaged property.

Mortgagee may
bid at sale.

Proof of Debts and Distribution of Assets.

140. Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise shall not be provable in insolvency and no person having notice of any act of insolvency available for adjudication against the insolvent shall prove for any debt or liability contracted by the insolvent subsequently to the date of his so having notice.

Description of
debts provable
in insolvency.
32 and 33 Vic.,
c. 71, s. 31.

Save as aforesaid all debts and liabilities present or future certain or contingent to which the insolvent is subject at the date of the order of adjudication or to which he may become subject during the continuance of the insolvency by reason of any obligation incurred previously to the date of the order of adjudication shall be deemed to be debts provable in insolvency.

All debts shall be proved before the trustee in the insolvency.

Mode of proof.

38 Vic. No. 5. An estimate shall be made according to the rules
s. 140. of the court for the time being in force so far as the same may be applicable and where they are not applicable at the discretion of the trustee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies or for any other reason does not bear a certain value.

Appeal.

Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the court and the court may if it think the value of the debt or liability incapable of being fairly estimated make an order to that effect and upon such order being made such debt or liability shall for the purposes of this Act be deemed to be a debt not provable in insolvency.

But if the court think that the value of the debt or liability is capable of being fairly estimated it may direct such value to be assessed with the consent of all the parties interested before the court itself without the intervention of a jury or if such parties do not consent by a jury either before the court itself or some other competent court and may give all necessary directions for such purpose and the amount of such value when assessed shall be provable as a debt under the insolvency.

“Liability” shall for the purposes of this Act include any compensation for work or labour done any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant contract agreement or undertaking whether such breach does or does not occur or is or is not likely to occur or capable of occurring

before the close of the insolvency and generally it shall include any express or implied engagement agreement or undertaking to pay or capable of resulting in the payment of money or money's worth whether such payment be as respects amount fixed or unliquidated as respects time present or future certain or dependent on any one contingency or on two or more contingencies as to mode of valuation capable of being ascertained by fixed rules or assessable only by a jury or as matter of opinion.

38 Vic. No. 5.
s. 141.

For the definition of acts of insolvency, see s. 44; as to the commencement of the insolvency, see s. 74; its close, see s. 166; date of the order of adjudication, s. 70.

As to the practice as to the proof of debts, see s. 177 (6), (7), and (8), rr. 53-61; for form of affidavits of proof, see Nos. 22-24; as to their not requiring a stamp, see table II.; as to rebate, see s. 141, r. 61; as to allowances of interest, see ss. 147, 157, r. 120; as to proof by a joint creditor for the purpose of voting, see s. 160; as to production of negotiable securities before payment of dividend, see r. 117; as to the creditor bearing the costs of proof, see r. 110; as to set-off, see s. 150; as to proof by creditors injured by the disclaimer of onerous property, see s. 130; as to proof against joint and separate estates, see ss. 68, 159-162; as to proofs by trustees, s. 132 (6).

Where a bill of sale was set aside as a fraudulent preference, a proof in respect of the advance on the bill of sale was not allowed.—*Re Tye, ex parte Miles*, 2 Q.L.J. 39.

141. Whenever any proof shall be made in respect of any debt of fixed or ascertained amount which has not accrued due at the date of adjudication such proof shall be allowed for the full amount of such debt and the creditor shall be entitled to receive dividends thereon equally with the other creditors but after deducting for the purposes of the first dividend a rebate at the prescribed rate by way of discount. Such rebate shall be computed upon so much of the debt as shall remain unpaid at the time

Rebate of
interest on
future debts.
Rule 1870, 77.

33 Vic. No. 5. of the declaration of the first dividend and shall be
ss. 142-143. computed from the time of such declaration to the
time at which the debt would have become payable
according to the terms on which it was contracted.

Provided that in estimating the value of any such
debt for the purpose of counting the vote of the
creditor a like rebate shall be made computed from
the time of voting to the time at which the debt
would have become payable as aforesaid.

As to allowance of interest on debts, see s. 147; in case of a
surplus, r. 120, s. 157; as to rebate, see s. 141, r. 61

Trustee may
expunge or
reduce proof.

142. The trustee may at any time upon the applica-
tion of any creditor or of the insolvent or on his own
motion and after the prescribed notice expunge or
reduce any proof of debt.

As to the practice, see rr. 56-58.

Preferential
debts.
32 and 33 Vic.,
c. 71, s. 32.

143. The debts hereinafter mentioned shall be paid
in priority to all other debts excepting rent as herein-
after provided Between themselves such debts shall
rank equally and shall be paid in full unless the pro-
perty of the insolvent is insufficient to meet them in
which case they shall abate in equal proportions
between themselves that is to say—

As to the insolvent's property divisible amongst his creditors, see
s. 87; as to rent, see s. 145.

Ibid (1).

(1.) All local rates due from him at the date of
the order of adjudication and having become
due and payable within twelve months next
before such date.

Ibid (1).

(2.) All rates and assessments assessed on him
up to the first day of January or first day of
July next before the date of the order of

adjudication and not exceeding in the whole 38 Vic. No. 5.
s. 144.
one year's assessment.

- (3.) All wages or salary of any clerk servant 32 and 33 Vic.,
c. 71, s. 32 (2).
laborer or workman in the employment of
the insolvent not exceeding three months'
wages or salary and not exceeding fifty
pounds Provided that such wages or salary
shall be claimed in respect of the three
months next before the date of the order of
adjudication.

Save as aforesaid all debts provable under the insol-
vency shall be paid *pari passu*.

144. Where at the time of the presentation of the Provisions in
case of
apprenticeship.
32 and 33 Vic.,
c. 71, s. 33.
petition for adjudication any person is apprenticed or
is an articulated clerk to the insolvent the order of ad-
judication shall if either the insolvent or apprentice
or clerk give notice in writing to the trustee to that
effect be a complete discharge of the indenture of
apprenticeship or articles of agreement and if any
money has been paid by or on behalf of such apprentice
or clerk to the insolvent as a fee the trustee may on
the application of the apprentice or clerk or of some
person on his behalf pay such sum as such trustee
subject to an appeal to the court thinks reasonable
out of the insolvent's property to or for the use of the
apprentice or clerk regard being had to the amount
paid by him or on his behalf and to the time during
which he served with the insolvent under the in-
denture or articles before the commencement of the
insolvency and to the other circumstances of the case.

Where it appears expedient to the trustee he may
on the application of any apprentice or articulated clerk

38 Vic. No. 5. to the insolvent or any person acting on behalf of
ss. 145-146. such apprentice or articed clerk instead of acting
 under the preceding provisions of this section transfer
 the indenture of apprenticeship or articles of agree-
 ment to some other person.

As to the commencement of the insolvency, see s. 74.

No distress to
 proceed after
 presentation of
 petition.
 32 and 33 Vic.,
 c. 71, s. 34.

145. No distress for rent shall be made or levied
 or proceeded in against the property of a debtor after
 an order of adjudication has been made against him
 or after a petition has been presented by him under
 Part III. of this Act but the landlord or person to
 whom the rent is payable shall be entitled to receive
 out of the estate in priority to all other creditors so
 much rent as shall be then due together with a sum
 in lieu of rent proportioned to the period (if any) that
 has elapsed between the last date at which rent
 became due and the date of the order of adjudication
 but so that the whole sum so received shall not exceed
 the amount of three month's rent.

But the landlord or person entitled to rent may
 prove for any surplus that may be due above such
 sum.

As to the commencement of the insolvency, see s. 74 ; as to the
 date of the adjudication, see s. 70 ; as to proof when rent not due
 at time of adjudication, see s. 146.

Proof in case of
 rent and
 periodical
 payment.
 32 and 33 Vic.,
 c. 71, s. 35.

146. When any rent or other payment falls due at
 stated periods and the order of adjudication is made
 at any time other than one of such periods the person
 entitled to such rent or payment may prove for a pro-
 portionate part thereof up to the day of the adjudica-
 tion as if such rent or payment grew due from day to
 day.

See note to last section.

147. Interest on any debt provable in insolvency computed up to the date of adjudication may be allowed by the trustee under the same circumstances in which interest would have been allowable by a jury if an action had been brought for such debt.

38 Vic. No. 5.
ss. 147-150.

Interest on
debts.
32 and 33 Vic.,
c. 71, s. 36.

As to debts provable, see s. 140; as to interest allowable by a jury, see "*The Common Law Practice Act of 1867*" (31 Vic., No. 17), ss. 72, 73. As to rebate, see s. 141, r. 61.

148. If any insolvent is at the date of the order of adjudication liable in respect of distinct contracts as member of two or more distinct firms or as a sole contractor and also as member of a firm the circumstance that such firms are in whole or in part composed of the same individuals or that the sole contractor is also one of the joint contractors shall not prevent proof in respect of such contracts against the properties respectively liable upon such contracts.

Proof in respect
of distinct
contracts.
32 and 33 Vic.,
c. 71, s. 37.

See further, r. 60.

149. The trustee with the consent of the creditors testified by a resolution passed in general meeting or of the committee of inspection may from time to time during the continuance of the insolvency make such allowance as may be approved by the creditors or committee of inspection to the insolvent out of the estate for the support of the insolvent and his family or in consideration of his services if he is engaged in winding-up his estate.

Allowance to
insolvent for
maintenance or
service.
32 and 33 Vic.,
c. 71, s. 38.

As to the commencement of the insolvency, see s. 74; as to the insolvent's property divisible amongst his creditors, see s. 87; as to the close of the insolvency, see s. 166; as to allowing the insolvent to manage the property, see s. 133 (2); as to employing him without allowance, see s. 122.

150. Where there have been mutual credits mutual debts or other mutual dealings between the insolvent

Set-off.
32 and 33 Vic.,
c. 71, s. 39.

38 Vic. No. 5. and any other person proving or claiming to prove a
 s. 151. debt under his insolvency an account shall be taken of
 what is due from the one party to the other in respect
 of such mutual dealings and the sum due from the one
 party shall be set off against any sum due from the
 other party and the balance of such account and no
 more shall be claimed or paid on either side respec-
 tively but a person shall not be entitled under this
 section to claim the benefit of any set-off against the
 property of an insolvent in any case where he had at
 the time of giving credit to the insolvent or of incur-
 ring the debt to the insolvent notice of an act of in-
 solvency committed by such insolvent and available
 against him for adjudication.

As to debts provable, see s. 140 ; as to acts of insolvency, see s.
 44 ; as to the insolvent's property divisible amongst his creditors,
 see s. 87.

Case

Re A. W. L. Bell, Q.L.R. pt. 3, 46.

Provision as to
 secured creditor
 32 and 33 Vic.,
 c. 71, s. 40.

151. A creditor holding a specific security on the
 property of the insolvent or on any part thereof may
 on giving up his security prove for his whole debt.

He shall also be entitled to a dividend in respect of
 the balance due to him after realizing or giving credit
 for the value of his security in manner and at the time
 prescribed.

The trustee with the consent of the committee of
 inspection may at any time within thirty days after
 proof has been tendered by a secured creditor require
 such creditor to give up his security on payment of the
 specified value and the creditor shall on such payment
 give up his security accordingly and do make and
 execute all necessary acts conveyances and assurances
 for that purpose.

Provided that a secured creditor who has proved 38 Vic. No. 5.
ss. 152-153.
may at any time before he is so required to give up
his security correct his valuation thereof by making
fresh proof of his debt.

A creditor holding such security as aforesaid and
not complying with the foregoing conditions shall be
excluded from all share in any dividend.

As to realizing security and proving for deficiency, see s. 75 and
rr. 62-65; as to giving up security and proving for his whole debt,
see s. 93 (4); as to assessing his security and proving for the
balance, see rr. 84, 85, 86, 119; as to the case of security held by
the petitioning creditor, see r. 100; as to the power of the court to
decide priorities, see s. 22; to order sale of equitable mortgage, s.
137; to redeem before the time appointed, s. 138.

Dividends.

152. The trustees shall from time to time when the Distribution of
dividenda.
32 and 33 Vic.,
c. 71, s. 41.
committee of inspection determines declare a dividend
amongst the creditors who have proved in the insol-
vency and shall distribute the same accordingly and
in the event of his not declaring a dividend for the
space of six months he shall summon a meeting of the
creditors and explain to them his reasons for not
declaring the same.

As to the practice relating to the declaration and payment of
dividenda, see rr. 114-120; as to the final dividend, see s. 155; as
to the date of the trustee's appointment, see s. 94; as to debts
provable, see s. 140; as to dividing property in its existing form
amongst the creditors, see s. 133 (7); as to the insolvent's property
divisible among his creditors, see s. 87.

153. In the calculation and distribution of a dividend Provision for
creditors
residing at a
distance.
32 and 33 Vic.,
c. 71, s. 42.
it shall be obligatory on the trustee to make provision
for debts provable in insolvency appearing from the
insolvent's statements or otherwise to be due to per-
sons resident in places so distant from the place where
the trustee is acting that in the ordinary course of

38 Vic. No. 5. communication they have not had sufficient time to
 ss. 154-157. tender their proofs or to establish them if disputed
 and also for debts provable in insolvency the subject
 of claims not yet determined.

See note to s. 152 ; as to the mode of proving debts, see r. 53.

Right of creditor
 who has not
 proved debt
 before
 declaration of
 dividend.
 32 and 33 Vic.,
 c. 71, s. 43.

154. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any moneys for the time being in the hand of the trustee any dividend or dividends he may have failed to receive before such moneys are made applicable to the payment of any future dividend or dividends but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

See note to s. 152.

Final dividend.
 32 and 33 Vic.,
 c. 71, s. 44.

155. When the trustee has converted into money all the property of the insolvent or so much thereof as can in the joint opinions of himself and of the committee of inspection be realized without needlessly protracting the insolvency he shall declare a final dividend and give notice of the time at which it will be distributed.

As to the final dividend, see s. 155 ; see note to s. 152.

Notice of
 dividends.
 E.R. 1870, 132

156. The trustee shall cause notice to be given in the *Gazette* and such other newspapers as may be prescribed of all dividends and moneys payable to creditors and when and where the same are to be paid.

Query whether the schedule contains such a form, see No 40.

Insolvent
 entitled to
 surplus.
 32 and 33 Vic
 c. 71, s. 45.

157. The insolvent shall be entitled to any surplus remaining after payment of his debts with interest at the prescribed rate and of the costs charges and expenses of the insolvency.

See note to s. 152 ; as to interest, see s. 147 ; rebate, r. 61 ; joint 38 Vic. No. 5.
creditors, s. 160. ss. 158-160.

158. No action or suit for a dividend shall lie against the trustee but if the trustee refuses to pay any dividend the court may if it thinks fit order the trustee to pay the same and also to pay out of his own moneys interest thereon for the time that it is withheld and the costs of the application.

No action for dividend.
32 and 33 Vic.,
c. 71, s. 46.

As to application for dividends when not paid, see r. 118 ; for the form of application, No. 41.

Joint and Separate Estates.

159. Where one member of a partnership has been adjudicated an insolvent the proceedings upon any other adjudication against a member of the same partnership shall be transferred to the court in which the first-mentioned insolvency is in course of prosecution and unless the court otherwise directs the property of such last-mentioned member shall vest in the trustee appointed in respect of the property of the first-mentioned member of the partnership and the court may give such directions for amalgamating the proceedings in respect of the properties of the members of the same partnership as it thinks just.

Property of partners to be vested in same trustee.
32 and 33 Vic.,
c. 71, s. 102.

As to transfer of proceedings, see r. 67 ; as to the consolidation of proceedings upon two petitions, see s. 177 (1) ; as to the insolvent's property divisible amongst his creditors, see s. 87.

160. If one partner of a firm is adjudged insolvent any creditor to whom the insolvent is indebted jointly with the other partners of the firm or any of them may prove his debt for the purpose of voting at any meeting of creditors and shall be entitled to vote thereat but shall not receive any dividend out of the separate property of the insolvent until all the separate

Joint creditor may prove for purpose of voting.
32 and 33 Vic.,
c. 71, s. 103.

38 Vic. No. 5. creditors have received the full amount of their re-
ss. 161-162. spective debts.

As to the insolvent's property divisible amongst his creditors, see s. 87; as to proof in respect of distinct contracts, see s. 148, r. 60.

Joint and
 separate
 dividends.
 32 and 33 Vic.,
 c. 71, s. 104.

161. Where joint and separate properties are being administered dividends of the joint and separate properties shall subject to any order to the contrary that may be made by the court on the application of any person interested be declared together and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties regard being had to the work done for and the benefit received by each property.

As to joint and separate creditors, see r. 60, as to costs, see r. 96.

Suits by trustee
 and insolvent's
 partners.
 32 and 33 Vic.,
 c. 71, s. 105.

162. Where a member of a partnership is adjudged insolvent the court may authorise the trustee with consent of the creditors testified by a special resolution to commence and prosecute any action or suit in the names of the trustee and of the insolvent's partner or partners and thereupon such proceedings may be had as if such action or suit had been commenced with the consent of such partner or partners and any release by such partner or partners of the debt or demand to which the action or suit relates shall be void but notice of the application for authority to commence the action or suit shall be given to such partner or partners and he or they may show cause against it and on his or their application the court may if it thinks fit direct that he or they shall receive his or their proper share of the proceeds of the action or suit and if he or they do not claim any benefit therefrom he or they shall be indemnified against costs in respect thereof as the court directs.

As to saving as to joint contractors, see s. 189.

38 Vic. No. 5.

ss. 163-164.

163. If the insolvent or any person on his behalf pay in full all his creditors or obtain a release of the debts due by the insolvent to such creditors the insolvent may apply to the court for an order annulling the adjudication and the court upon being satisfied that all the creditors of the insolvent have been paid in full or have released their debts may make such order upon such terms as to commission or remuneration or charges already incurred as may seem just.

On payment or release of debts insolvency may be annulled.

As to the consequences of annulling the adjudication, see s. 178; for form of the application to annul, see No. 48; of order, No. 49; of notice of, No. 50.; as to notice to the trustee, see Reg. Gen., 7th August, 1877, r. 4, *post*; as to power to annul in other cases, see ss. 14, 39, 134, 163, r. 200.

Adjudication annulled, the insolvent having obtained a release, *Case.* the principal debt being for a personal injury in respect of which the party injured was satisfied; circumstances under which the adjudication should not be annulled when a certificate has been refused.—*Re F. Corry*, 1 Q.L.J. 59.

PART VII.—CLOSE OF INSOLVENCY AND CERTIFICATE.

Last Examination of Insolvent.

164. The court shall on the application of the trustee or if he omit to make such application then on the application of the insolvent appoint some day not earlier than one month from the date of the order of adjudication for the insolvent to attend in court to pass his last examination of which appointment the prescribed notice shall be given but the court shall have power from time to time to enlarge or extend the time so appointed At the time so appointed or at any enlargement or adjournment thereof the court may in any of the following cases adjourn such exami-

Court to appoint sitting for last examination.

Adjournment thereof.

38 Vic. No. 5. nation for such period as the court may think fit that
s. 165. is to say:—

- (1.) If the examination and accounts of the insolvent are not satisfactory and it appears to the court that his failure to give further or better information or accounts is attributable to any neglect or default on his part.

Where the examinations and accounts of the insolvent were most unsatisfactory the examination was adjourned for six months.—*Re G. Wilson*, Oct. 4th, 1886.

- (2.) If it appears to the court that the insolvent has wilfully disobeyed any order of the court in his insolvency.

- (3.) If the court shall think it fit that an adjournment should be made.

As to this application being heard in court, see r. 2; as to fourteen days' notice being advertised and given to the insolvent, see r. 81; for form of notice, see No. 34; as to notice to the trustee, see Reg. Gen., 17th Aug., 1877, r. 4., *post*; for form of the memorandum of last examination, see No. 36; as to the conduct of the insolvent, see s. 122.

Cases.

An insolvent whilst under sentence for fraudulent insolvency may pass his last examination—*Re Branch*, Nov. 18th, 1878; but not where he is committed for trial for a misdemeanour—*Re Kittson*, Dec. 11th, 1878.

Where to be held.

165. The court may order that the last examination shall be held before any police magistrate who for such purpose shall have all the powers of the court under the last preceding section.

By "*The Insolvency Act Amendment Act 1876*" (40 Vic. No. 12), s. 1, orders on persons to attend before the police magistrate at Bowen and Brisbane are not to be made and such magistrates are not to have jurisdiction under this section. (See the Act, *post*.)

As to transmitting the evidence to the court, see s. 182; as to its being in writing and signature, see r. 166; as to shorthand writer,

see s. 183, r. 167 ; as to the power of the court to commit summarily 38 Vic. No. 5.
insolvent guilty of offence, see s. 216.

s. 166.

The examination ordered to take place where the majority of the Case.
creditors resided.—*Re Hurford*, September 13th, 1878.

The order under this section frequently provides that in case of adjournment the examination is to be continued with as few adjournments as possible, and that if any adjournment takes place before any sitting has lasted three hours the trustee is to report the matter to the court, subject to which the police magistrate is to have power to adjourn.

Close of Insolvency.

166. When the whole property of the insolvent or so much thereof as can in the joint opinion of the trustee and committee of inspection be realized without needlessly protracting the insolvency has been realized for the benefit of his creditors or a composition or arrangement has been completed the trustee shall make a report accordingly to the court and the court if satisfied that the whole of the property of the insolvent has been realized for the benefit of his creditors or that so much thereof as can be realized without needlessly protracting the insolvency has been so realized or that a composition or arrangement has been completed shall make an order that the insolvency has closed and the insolvency shall be deemed to have closed at and after the date of such order.

Close of
insolvency.
32 and 33 Vic.,
c. 71, s. 47.

As to the insolvent's property divisible amongst his creditors, see s. 87 ; for the form of the report of trustee for closing the insolvency, see No. 42 ; of order closing the insolvency, see No. 43 ; as to the court's direction where no committee of inspection, see s. 101 (18) ; as to the status of an undischarged insolvent after the close of the insolvency, see s. 176 ; as to the effect of the certificate of discharge, see ss. 173, 174.

If the insolvent has not received his certificate of discharge the Case.
trustee before applying to close the insolvency should file a report of the circumstances under which the insolvency has arisen, and

- 38 Vic. No. 5. tending to prove whether or no the insolvent should be held responsible for the same.—*Re Bradshaw Barker*, 1 Q.L.J. 25.
s. 167.

If he has not done so he may be ordered to pay the costs of a consequent adjournment.—*Re H. A. Crank & Co.*, March 19th and 31st, 1886. See further, *Re H. Bennett*, April 26th, 1886; *Re A. Campbell*, April 28th, 1886; cited, *post*, under s. 167.

If no such order has been made at the time of granting a certificate of discharge as hereinafter provided the court shall on granting such certificate also make an order that the insolvency has closed.

This paragraph of the section is repealed by "*The Insolvency Act Amendment Act of 1876*" (40 Vic. No. 12), s. 2, *post*.

A copy of the order closing the insolvency shall be published in the *Gazette* and the production of a copy of such *Gazette* containing a copy of the order shall be conclusive evidence of the order having been made and of the date and contents thereof.

Discharge of Insolvent.

Certificate.
Certificate may
be granted on
certain
conditions.
32 and 33 Vic.,
c. 71, s. 48.

167. At any time after the insolvent has passed his last examination or at any earlier time with the consent of the creditors testified by a special resolution the insolvent may upon the prescribed notice apply to the court for a certificate of discharge but such certificate shall not be given unless it is proved to the court either—

As to this application being heard in court, see r. 2; as to notice to the trustee, see Reg. Gen., 17th August, 1877, r. 4 *post* and r. 121; as to passing the last examination, see s. 164; as to a special resolution, see s. 93 (7); as to meetings of creditors subsequent to the first meeting, see s. 128; as to the insolvent's request to the trustee to summon a meeting, see r. 123; as to the insolvent's filing application for a certificate, see r. 121; for form thereof, see No. 53; as to fixing time for the hearing of the application and gazetting it, and giving notice to the trustee twenty-one days before the time fixed, see r. 121; for form of notice, see No. 52; as to applications for certificates requiring a £1 stamp, see table II.; for form of the memorandum of the application for a certificate, see No. 54; of the

certificate of discharge, No. 55 ; as to its form and date, see s. 172 ; 38 Vic. No. 5. as to its date and being gazetted, see r. 122 ; for form of notice, see s. 167. No. 57 ; as to the certificate not being drawn up till after the expiration of the time allowed for appeal or appeal brought, see s. 172 ; as to appeals, see ss. 14-17, and notes thereto ; as to payments to influence creditors to forbear opposing the granting of a certificate, see s. 171. As to the status of an undischarged insolvent, see s. 176 ; as to the effect of the certificate as evidence of the insolvency and as to pleading it, see s. 174 ; as to the certificate not releasing joint debtors, see s. 175.

The application cannot be withdrawn without leave.—*Re E. R. Cases.* Daunt, April 26th, 1881.

The trustee not having filed a report, the application was adjourned till a subsequent day, on which day the trustee was ordered to appear and show cause why he should not pay the costs of the adjournment occasioned by his default in not filing his report.—*Re H. A. Crank & Co.*, March 19th, 1886. Subsequently the trustee was ordered to pay the costs, fixed at four guineas, March 31st, 1886. A similar course pursued when the report was insufficient.—*Re H. Bennett*, April 28th, 1886. Without costs, April 30th, 1886. *Re A. Campbell*, April 28th, 1886.

See also cases cited under s. 166.

- (1.) That the insolvency has arisen from circumstances for which the insolvent cannot justly be held responsible or—

There must be a proof of the circumstances from which the insolvency arose, and it must be proved to the satisfaction of the court that the insolvent was not responsible for those circumstances ; the Act throwing a very serious responsibility upon the judge.—*Re J. and G. Harris*, March 9th, April 2nd, 1877.

The Act casts on the insolvent applying for a certificate the burden of proof that his insolvency arose from circumstances for which he cannot justly be held responsible. The court considers the absence of opposition in coming to a conclusion.—*Re J. & G. Harris*, 1 Q.L.R. pt. 2. p. 2.

“The true interpretation of the section is that the court, in deciding as to the circumstances for which the insolvent should be held responsible, should be limited by the rules which guide the court in deciding on the responsibility of persons in its ordinary jurisdiction. A person can be justly held responsible only for that for which he is legally responsible. In his dealing with others, if, *qui juris*, he is held responsible for his acts and omissions done intentionally, and to

38 Vic. No. 5. which he has given his complete and free consent. He seeks to justify or excuse himself from responsibility for his acts of commission or omission by pleading that they were the result of accident or mistake or of fraud perpetrated on him by others. The law generally accepts such justification and excuse if he can show that the circumstances from which his responsibility arose were—(1) the result of accident, intending thereby not merely inevitable casualty or the act of Providence, or what is technically called *vis major* or irresistible force, but such unforeseen events, misfortunes, or omissions as are not the result of any negligence or misconduct on his part; (2) the result of mistakes, which may be considered as included in this definition of accident, but as contra-distinguished from it, meaning some unintentional act or omission or error arising from unconsciousness, ignorance, or forgetfulness, surprise, imposition, or misplaced confidence, not due to negligence; (3) the result of a fraud perpetrated on him by others, and not attributable only to that want of due diligence which may fairly be expected from a reasonable person. If an insolvent applies for a certificate of discharge on the ground that he cannot justly be held responsible for the circumstances from which his insolvency arose, he must support his application on one of these three grounds. The onus of proving the affirmative is on him. He it is who must come prepared to show that such circumstances were beyond his own control, or that his acts which caused them to arise were done by him in entire good faith, and in the performance of a supposed duty without negligence. If he fails, he is not entitled to the relief afforded him by the statute. It has often been urged, as a ground for granting the certificate, that the creditors do not appear and oppose. This state of things may arise as follows:—They may know that the circumstances are such that the insolvent ought not to receive a certificate; they may desire that he may obtain it, and yet such desire may not be strong enough to induce them to act under the powers given them by subsection 2, and to decide in opposition to that which they know to be right; again, they may be perfectly indifferent, and not take sufficient interest in the matter to induce them to go to the expense of opposition; and lastly, they may know that the insolvent is entitled to have his application for a certificate granted. Under these circumstances such a ground must be of the least, if of any, value. The negligence on the part of the insolvent which is to debar him from receiving his certificate, assuming that he has been able to show that the circumstances which caused his insolvency were beyond his control, or were done by him in good faith and in performance of a supposed duty, is a negligence arising from the neglect of a duty—the duty which every person owes to every other with whom he deals to pay him what he may owe him when the time for such payment shall arise. If the insolvent has conducted his business with the prudence and care which persons of reasonable or ordinary prudence use in the management of their own affairs he will be entitled to receive a certificate of discharge; if he has not,

his application for a certificate should be refused."—Per H., J., in 38 Vic. No. 5.
re Thos. Quinn, 1 Q.L.J. 19, in a note to which case the previous s. 167.
 decisions on these sections are collected.

The insolvent must satisfy the court by something like proof in the shape of contemporary record that what he is stating is the truth, and that he is entitled to relief. A person with a fixed income should live within his means; a sickly wife is no excuse.—*Re* Dunn, 1 Q.L.J. 80.

The unsuccessful defence of an action is not alone sufficient.—*Re* W. T. Perkins, 1 Q.L.J. 90.

Sickness of a member of the insolvent's family is not a sufficient excuse.—*Re* J. H. Andrews, March 16th, 1881.

An insolvent who had made no profits for some years, but continued to expend on his personal expenses resources which would have been available for his creditors, refused his certificate.—*Re* A. Tooth, September 9th, 1885.

An insolvent, a commission agent, who had used the moneys of his constituents for his own purposes, refused his certificate.—*Re* George Harden, February 10th, 1886.

Where an insolvent had lived considerably beyond his means his certificate was suspended.—*Re* A. Messon, March 31st, 1886.

When the insolvency was caused by the insolvent's intemperate habits and neglect of business, certificate was refused.—*Re* Thomas Jones, April 7th, 1886.

A trader making a regular monthly loss for three years, it was held that he should have stopped earlier, and his certificate was suspended for eighteen months.—*Re* W. Shea, April 16th, 1886.

Insolvent's affidavit should show what his income was, and what had been his private expenditure.—*Re* C. M. Sherry, June 11th, 1886; *Re* C. J. Blakeney, June 11th, 1886.

A tradesman who does not keep books should never receive a certificate.—*Re* Durant, Oct. 18th, 1886.

As to offences, see Part XI.

- (2.) That a special resolution of his creditors has been passed to the effect that his insolvency has arisen from such circumstances as last aforesaid and that they desire that a certificate of discharge shall be granted to him or—

A report of the trustee must be filed in all cases before a certi- Cases.

38 Vic. No. 5. ficate of discharge will be granted, and in cases where the trustee
 s. 168. resides near the court he will be required to attend.—*Re L. Severin*,
 1 Q.L.J. 59.

See cases collected under s. 166.

Observations on the sufficiency of a consent given on the mere motion of the creditors present at the first meeting.—*Re J. Clune*, May 3rd, 1880.

It is not left to the judge to disagree with the resolution. The certificate should be granted unless the circumstances mentioned in the later part of the section are present.—*Re Harrison*, August 7th, 1876; *re J. W. Bennett*, 2 Q.L.J. 128.

(3.) That the gross amount realized in the estate is equal to the total amount of debts proved in the estate.

But the court may nevertheless suspend for such time as it deems to be just or withhold altogether the certificate of discharge if it appears to the court by sufficient evidence that the insolvent has made default in giving up to his creditors the property which he is required by this Act to give up or that a prosecution has been commenced against him in pursuance of the provisions relating to the punishment of fraudulent debtors contained in this Act.

As to the insolvent's property divisible amongst his creditors, see s. 87; as to his conduct, see s. 122.

Application for
 certificate after
 lapse of time.

168. Whether any application shall have been made under the preceding section or not the court at the time and in the circumstances following may on the application of any insolvent who has not obtained a certificate of discharge and after the prescribed notice grant such certificate and for such purpose may alter or vary any decision theretofore pronounced—

See note to last section.

Cases.

The insolvent cannot, without the leave of the court, withdraw

his application.—*Re E. R. Daunt*, 1 Q.L.J. 7. See the C.J.'s 36 Vic. No. 5. judgment cited at the end of this section. s. 168.

The trustee ordered to pay the costs of an adjournment rendered necessary by his imperfect report.—*Re Chas. Jno. Gordon*, 2 Q.L.J. 9.

See further cases collected under s. 166.

- (1.) At the expiration of twelve months from the date of adjudication with the assent testified in writing of a majority in number of the creditors whose debts amount to ten pounds and upwards who have proved in the estate.

As to the date of the adjudication, see s. 70.

- (2.) At the expiration of two years without the consent of any creditor.

On an application under this subsection some evidence is necessary *Cases.* to show that the insolvency has been brought about by circumstances beyond the control of the insolvent, and for which he could not be justly held responsible; and the grant of a certificate of discharge, after the expiration of two years, is not a matter of right in the insolvent.—*Re W. T. Perkins*, 1 Q.L.J., 90. To a similar effect are *re J. Phillips*, March 21st, 1881; *re Jas. Josephson*, March 30th, 1881.

Certificate refused, the insolvent having paid all his creditors but three in full since the date of adjudication, instead of allowing an equal division to have been made by the official trustee.—*Re Jas. Yates*, 2 Q.L.J., 9.

The insolvent had not passed his last examination, but the trustee not requiring him to do so, a certificate was granted.—*Re P. Wormwell*, Sept. 3rd, 1885.

Provided that upon any such application the insolvent shall make oath that he has made a full and fair discovery of his estate and has not granted or promised any payment or security and has not entered into any collusive agreement for the purpose of obtaining such consent.

38 Vic. No. 5.
ss. 169.

But the court may nevertheless upon any such application withhold the certificate or suspend the same for such period as it shall deem just.

The burden of proof is on the insolvent to prove some one of the statutory conditions entitling him to a certificate of discharge.—*Re E. R. Daunt*, 1 Q.L.J., 7. In this case the C.J., in delivering judgment, said: “The insolvent having passed his last examination, and two years having elapsed from the date of adjudication, he filed an application for his certificate in the form No. 53 prescribed by the rules. The registrar appointed a time and place for hearing the application, and the required notice was gazetted and given to the trustee by the insolvent, in accordance with rule 121. A sitting of the court has been held pursuant to the registrar’s appointment. The trustee appeared and rendered his report. The insolvent did not appear, nor did any one on his behalf. The question for me to determine is whether, under such circumstances, I can deal with the application for the certificate. The procedure in this instance is under section 168 of the Act, and the court has decided that the insolvent must, under that section, prove some one of the statutory conditions entitling an insolvent to a certificate of discharge. The burden of proof is on the insolvent, and if he, after having applied to the court for such certificate, does not produce satisfactory evidence, the statute provides that ‘such certificate shall not be given.’ Under the English law the court must on its own motion appoint a sitting to consider the question of granting an order of discharge to the bankrupt. Under our statute the insolvent gives the court jurisdiction by applying for a certificate of discharge. He does so by filing his application on the records of the court, and the time and place of hearing having been fixed by the registrar the judge attends in court, ready to receive the evidence and to hear the application which is read (form No. 54). The insolvent has then an opportunity of satisfying the court that ‘he is entitled to such certificate.’ If he fails to appear or having appeared does not prove to the court that he is so entitled, the matter may be adjudicated upon. The insolvent cannot, in my opinion, without the leave of the court, withdraw his application. When the insolvent has applied to the court he cannot evade its judgment. In this case the insolvent and his solicitors absented themselves, and failed to give any evidence or to support the application in any way; they did not even apply for another opportunity of doing so.”

Application at
the end of three
years.

169. At the expiration of three years from the date of the order of adjudication any insolvent who has not obtained a certificate of discharge may with the consent testified in writing of a majority of the credi-

tors whose debts amount to ten pounds and upwards 38 Vic. No. 5.
 who have proved in the estate apply after the pre- ss. 170-171.
 scribed notice to the court for a certificate And
 upon its being proved to the satisfaction of the court
 that such consent has been obtained and has been so
 obtained without fraud or collusion the court shall
 grant the certificate of discharge.

Provided that upon any such application the insolvent shall make oath that he has made a full and fair discovery of his estate and has not granted or promised any payment or security and has not entered into any collusive agreement for the purpose of obtaining such consent.

See note to ss. 167, 168.

170. If on any application for a certificate the court shall be of opinion that a certificate ought not to be granted unconditionally it may grant a certificate subject to any condition touching any salary pension emoluments profits wages earnings or income which may afterwards become due to or earned by the insolvent and generally touching after-acquired property. Conditional certificate.

As to the appropriation of portion of the pay of officers to creditors, see s. 103; of salary, see s. 104; as to the practice, see rr. 154-156, and notes to those sections and rules.

171. Any payment contract covenant or security for the payment of any money made or given by an insolvent or other person to or in trust for any creditor for the purpose or with intent to persuade or induce such creditor to forbear opposing the granting of a certificate or to consent to the granting of a certificate or to forbear appealing against the granting of a Payments, &c.
to influence
creditors void

38 Vic. No. 5. certificate shall be void and the money (if any) paid
s. 172-173. may be recovered and any money so agreed to be
 paid or secured shall not be recoverable.

Form and date
 of certificate.

172. The certificate of discharge shall be in the prescribed form and shall be under the hand of the registrar and seal of the court but shall not be drawn up or take effect until after the expiration of the time allowed for appeal or if an appeal be brought until after the decision of the court of appeal thereon and shall bear date either the day after the expiration of the time allowed for appeal or the day of the decision of the court of appeal as the case may require.

See note to s. 167.

Effect of
 certificate.
 32 and 33 Vic.,
 c. 71, s. 49.

173. A certificate of discharge shall not release the insolvent from any debt or liability incurred by means of any fraud or breach of trust nor from any debt or liability whereof he has obtained forbearance by fraud or from any debt or liability due by him as trustee of an insolvent estate in respect of any sum of money improperly retained or employed by him as such trustee.

But it shall release the insolvent from all other debts provable under the insolvency with the exception of—

- (1.) Debts due to the Crown.
- (2.) Debts with which the insolvent stands charged at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue or at the suit of the sheriff or other public officer on a bail bond entered into for the

appearance of any person prosecuted for any such offence. 38 Vic. No. 5.
ss. 174-176.

And he shall not be discharged from such excepted debts unless the Colonial Treasurer for the time being certifies in writing his consent to his being discharged therefrom.

As to debts provable in insolvency, see s. 140; as to the effect of a certificate of discharge under a liquidation, see s. 202; as to the effect of a resolution for composition, see s. 204; as to fraud, see s. 215; as to partners, see s. 175

As to persons liable for penalties, damages, or costs for printing any blasphemous, seditious, or defamatory libel, see 11 Vic., No. 13, s. 14.

As to process for contempt, in non-payment of money or costs incurred by creditor, but subject to taxation, see *The Equity Act of 1867* (31 Vic., No. 18), s. 140.

174. A certificate of discharge shall be sufficient evidence of the insolvency and of the validity of the proceedings therein and in any proceedings that may be instituted against an insolvent who has obtained a certificate of discharge in respect of any debt from which he is released by such certificate the insolvent may plead that the cause of action occurred before his discharge and may give this Act and the special matter in evidence. Effect as
evidence.
32 and 33 Vic.,
c. 71, s. 49.

175. The certificate of discharge shall not release any person who at the date of the order of adjudication was a partner with the insolvent or was jointly bound or had made any joint contract with him. Exception of
joint debtors.
32 and 33 Vic.,
c. 71, s. 50.

Status of Undischarged Insolvent.

176. Where a person who has been made insolvent has not obtained his discharge then from and after the close of his insolvency the following consequences shall ensue— Status of
undischarged
insolvent.
32 and 33 Vic.,
c. 71, s. 54.

38 Vic. No. 5. As to granting certificates of discharge, see ss. 167-170; and
s. 176. notes as to the close of the insolvency, see s. 166.

- (1.) No portion of a debt provable under the insolvency shall be enforced against the property of the person so made insolvent until the expiration of three years from the close of the insolvency and during that time if he pay to his creditors such additional sum as will with the assets realized in the estate make up twenty shillings in the pound on all debts proved in the insolvency he shall be entitled to a certificate of discharge in the same manner as if an amount equal to twenty shillings in the pound on such debts had originally been paid out of his property.

As to debts provable, see s. 140; for definition of "property," see s. 4.

As to applications for certificates during three years after the close of the insolvency, see rr. 147-149; for form of notice to creditors, see No. 56; for form of certificate, see No. 55.

- (2.) At the expiration of a period of three years from the close of the insolvency if the insolvent has not obtained a certificate of discharge any balance remaining unpaid in respect of any debt proved in the insolvency but without interest in the meantime shall be deemed to be a subsisting debt in the nature of a judgment debt and subject to the rights of any persons who have become creditors of the debtor since the close of his insolvency may be enforced against any property of the debtor with the sanction of the Supreme Court or a judge thereof but to the extent only and at the time and in manner

directed by such court or judge and after ^{38 Vic. No. 5.}
giving such notice and doing such acts as s. 177.
may be prescribed in that behalf.

As to interest on debts, see s. 147; rebate, s. 141, r. 61; as to the practice on the enforcement of debts against an undischarged insolvent, see rr. 157-159; for form of notice, see No. 58.

PART VIII.—SUPPLEMENTAL PROVISIONS.

As to Proceedings.

177. The following provisions shall apply to pro-
ceedings in insolvency namely—

Supplemental
regulations as to
proceedings in
insolvency.
32 and 33 Vic.,
c. 71, s. 80.
Ibid (2).

- (1.) Where two or more insolvency petitions are presented against the same debtor or against debtors being members of the same partnership the court may consolidate the proceedings or any of them upon such terms as the court thinks fit.

As to the practice, see r. 35; as to amalgamating proceedings in partnership cases, see s. 159.

- (2.) Where the petitioner does not proceed with ^{ibid (4).}
due diligence on his petition the court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor.
- (3.) In cases where the whole of the proceedings in an insolvency have been referred to a district court if the creditors resolve by a special resolution that it will be more convenient that the proceedings shall be referred back to the Supreme Court an order shall be made referring the same back accordingly.

38 Vic. No. 5. As to the power to transfer cases to a district court, see s. 18, rr. s. 177. 66-69, forms Nos. 32, 33.

As to a special resolution, see ss. 93 (7), 128.

32 and 33 Vic.,
c. 71, s. 80 (5).

- (4.) In cases where any proceedings in insolvency have been referred to a district court if the creditors resolve by a special resolution that it will be more convenient that the whole or any part of such proceedings should be transferred to some other district court or if the judge certifies that in his opinion the whole or some part of the proceedings would be more advantageously conducted in some other district court and the creditors do not by resolution object to such certificate an order shall be made transferring the whole or part of the proceedings to such other district court accordingly and the same shall thenceforth be carried on and prosecuted in such other court.

See note to last clause. As to an ordinary resolution, see ss. 93 (6), 128.

Ibid (6).

- (5.) Cases may be transferred from one court to another in the prescribed manner.

See notes to clauses 3 and 4.

- (6.) Proofs of debt may be made by affidavit sworn before any justice commissioner for affidavits or registrar or in any other mode which may be prescribed or which may be deemed satisfactory by the trustee.

See further, r. 54.

Ibid (7).

- (7.) A corporation may prove a debt vote and otherwise act in insolvency by an agent duly authorised.

See further, r. 55; for form, see No. 24; as to the verification of 38 Vic. No. 5. petitions by corporations, see s. 52. s. 177.

- (8.) In any case of creditors being partners any thing by this Act authorised to be done by a creditor may be done by any one or more of the members of such partnership in the name and on behalf of the partnership.

As to petitions by partners, see s. 52.

- (9.) A creditor may in the prescribed manner by ^{32 and 33 Vic., c. 71, s. 80 (8).} instrument in writing appoint a person to represent him in all matters relating to any debtor or his affairs in which a creditor is concerned in pursuance of this Act and such representative shall thereupon for all the purposes of this Act stand in the same position as the creditor who appointed him. But no such appointment shall be made by way of sale of a debt or *chose in action*.

As to proxies, see r. 70; for form of a proxy, see No. 23; as to filing it at the first meeting the proxy attends, see r. 71.

- (10.) When a debtor who has been adjudicated ^{*ibid* (9).} an insolvent dies the court may order that the proceedings in the matter be continued as if he were alive.
- (11.) The court may at any time on proof to its ^{*ibid* (10).} satisfaction that proceedings in insolvency ought to be stayed by reason that negotiations are pending for the liquidation of the affairs of the insolvent by arrangement or for the acceptance of a composition by the creditors in pursuance of the provisions herein contained or on proof to its satisfaction or any other sufficient reason for staying

38 Vic. No. 5.
s. 178.

the same make an order staying the same either altogether or for a limited time on such terms and subject to such conditions as the court may think just.

As to liquidation by arrangement and proceedings for composition, see ss. 202-205; as to staying proceedings after the presentation of a petition, see r. 194; for form of order, see No. 47.

Consequences of
annulling of
adjudication.
32 and 33 Vic.,
c. 71, s. 81.

178. Whenever any adjudication in insolvency is annulled all sales and dispositions of property and payments duly made and all acts theretofore done by the trustee or any person acting under his authority or by the court shall be valid but the property of the debtor who was adjudged an insolvent shall in such case vest in such person as the court may appoint or in default of any such appointment revert to the insolvent for all his estate or interest therein upon such terms and subject to such conditions if any as the court may declare by order.

Order annulling
to be gazetted.

A copy of the order of the court annulling the adjudication of a debtor as an insolvent shall be forthwith published in the *Gazette* and advertised locally in the prescribed manner and the production of a copy of the *Gazette* containing such order shall be conclusive evidence of the fact of the adjudication having been annulled and of the terms of the order annulling the same,

As to the power to annul, see s. 39; on a composition having been agreed on, s. 134, r. 200; on payment or release of debts, s. 163; as to the court reversing its order, see s. 14. For form of notice in *Gazette* and paper, of insolvency having been annulled, see No. 50.

As to transmission of land under "*The Real Property Act of 1861*," by registered adjudication of insolvency subsequently annulled, see "*The Real Property Act of 1877*" (41 Vic. No. 18), s. 34, *post*.

179. No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity unless the court before which an objection is made to such proceeding is of opinion that substantial injustice has been caused by such defect or irregularity and that such injustice cannot be remedied by any order of such court.

38 Vic. No. 5.
ss. 179-180.

Formal defects
not to invalidate
proceedings.
32 and 33 Vic.,
c. 71, s. 82.

The court may if it think fit make an order declaring that any such proceeding is valid notwithstanding any such defect or irregularity.

As to power to amend, see "*The Supreme Court Act of 1874*" (32 Vic. No. 3), s. 11.

As to defects in election of trustees and inspectors, see s. 101 (16).

Misnomer of insolvent by non-insertion of a second christian name does not invalidate proceedings in insolvency, and the court may insert such name and order further proceedings to be taken in the full name of the insolvent.—*Re G. J. Greenslade*, 1 Q.L.J. 22.

Cases.

An order to amend the adjudication by inserting the full name of the insolvent was made, the order *nisi* having been advertised.—*Re M. Woods*, Aug. 9th, 1880.

Resolutions signed by the chairman only (see form 97), and not filed within the time required (see r. 218), directed to be filed.—*Re A. Ross*, July 7th, 1875.

Evidence.

180. The registrar or any other person presiding at a meeting of creditors under this Act shall cause minutes of all resolutions and proceedings of such meeting to be kept and duly entered in a book and from time to time to be duly filed in court and any such minute as aforesaid if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or a certified copy thereof as herein provided shall be received as evidence in all legal proceedings and until the contrary is proved every general meeting of the creditors in respect of the proceedings of which minutes have been

Evidence of
proceedings at
meeting of
creditors.
32 and 33 Vic.,
c. 71, s. 106.

38 Vic. No. 5. so made shall be deemed to have been duly held and ss. 181-182. convened and all resolutions passed or proceedings had thereat to have been duly passed and had.

For form of minutes at first meeting, see No. 25.

Evidence of proceedings in insolvency. 32 and 33 Vic., c. 71, s. 107.

181. Any petition or copy of a petition in insolvency any order or copy of an order made by any court having jurisdiction in insolvency any certificate or copy of a certificate made by any court having jurisdiction in insolvency any deed or copy of a deed of arrangement in insolvency and any other instrument or copy of an instrument affidavit or document made or used in the course of any insolvency proceedings or other proceedings had under this Act may if any such instrument as aforesaid or copy of an instrument appears to be sealed with the seal of any court having jurisdiction or purports to be signed by any judge having jurisdiction in insolvency under this Act or sealed with the seal of any registry in insolvency under this Act be receivable in evidence in all legal proceedings whatever.

As to the insolvency court having seals, see s. 185.

As to evidence of advertisement in *Gazette*, see s. 186; see further as to documentary evidence, "*The Evidence and Discovery Act of 1867*" (31 Vic. No 13), ss. 2 and 42; as to taking judicial notice of the signatures of the Supreme Court judges and of certain officers thereof, see *ibid*, s. 3; as to receiving certain documents in evidence, without proof of signature or seal, see *ibid*, s. 42.

Evidence in insolvency.

182. Any evidence or depositions taken before any examining court shall be transmitted to the court having jurisdiction in the insolvency if such last-mentioned court be not the examining court And any such evidence or depositions and any other evidence or depositions taken in the insolvency shall be admissible and may be used in the insolvency as the case may require saving all just exceptions.

As to power to summon witnesses before adjudication, see s. 73 ; 38 Vic. No. 5. suspected of having property of the insolvent, see s. 114 ; as to the last examination, see s. 164. ss. 183-185.

As to reducing evidence into writing and its signature by the deponent, see r. 166.

183. In any case in which any examination of the insolvent or of witnesses is had before any court under this Act the court may on the application of the trustee or any creditor (but at the expense in the first instance of the party making such application) direct the evidence of the insolvent or witnesses or any of them to be taken down by a shorthand writer appointed by the court who shall be sworn faithfully to report the evidence and in such case a transcript of the shorthand writer's or reporter's notes certified by him to be correct shall be admitted to prove the oral evidence of the witnesses in the same manner as depositions signed by them might be admitted.

Shorthand
writer.
E.R. 1870, 207.

As to the trustee employing a shorthand writer, see s. 133 (8).
As to remuneration of a shorthand writer, see r. 167.

A shorthand writer was appointed under this section.—*Re J. Case*.
Long, May 28th, 1875.

184. In case of the death of the insolvent or his wife or of a witness whose evidence has been taken by any court in any proceeding under this Act the deposition of the person so deceased purporting to be sealed with the seal of the court or a copy thereof purporting to be so sealed shall be admitted as evidence of the matters therein deposed to.

Death of
witnesses.
32 and 33 Vic.,
c. 71, s. 108.

See the next section as to the seal.

185. Every district court in insolvency and every district registry in insolvency shall for the purposes of this Act have a seal describing such court or registry respectively and judicial notice shall be taken of such

Insolvency court
to have seals.
32 and 33 Vic.,
c. 71, s. 109.

38 Vic. No. 5. seal and of the signature of the judge or registrar of
 ss. 186-188. any such court or registry in all legal proceedings
 The seal of a district court in insolvency may be the
 same as that now used in any such court.

*Gazette to be
 evidence.*

186. A copy of the *Government Gazette* containing any such advertisement as is by this Act or the general rules directed or authorised to be made therein shall be evidence of any matter therein contained of which notice is so directed or authorised to be given by such advertisement.

All proceedings or notices so directed or authorised to be inserted in the *Government Gazette* other than notices by the trustee shall be marked with the seal of the court and certified by the registrar.

Miscellaneous.

*Expenses of
 registrar
 attending
 meetings, &c.
 32 and 33 Vic.,
 c. 71, s. 110.*

187. Where a registrar under the authority of this Act attends at any place for the purpose of presiding at a meeting of creditors or of otherwise acting under this Act his travelling and incidental expenses incurred in so doing and those of any clerk or officer attending him shall after being settled by the court be paid out of the insolvent's property if sufficient and otherwise shall be deemed part of the expenses of the court.

As to the property of the insolvent divisible amongst his creditors, see s. 87.

As to the applications as to the place of first meeting, see r. 75 ; as to deposit on such application, see r. 76.

*Power of
 assignee to sue.
 32 and 33 Vic.,
 c. 71, s. 111.*

188. Any person to whom anything in action belonging to the insolvent is assigned in pursuance of this Act may bring or defend any action or suit relating to such thing in action in his own name.

189. Where an insolvent is a contractor in respect of any contract jointly with any other person or persons such person or persons may sue or be sued in respect of such contract without the joinder of the insolvent.

38 Vic. No. 5.
ss. 189-191.

Saving as to
joint contracts.
32 and 33 Vic.,
c. 71, s. 112.

As to suits by the trustee and insolvent partners, see s. 162.

190. Every deed conveyance assignment or other assurance relating solely to freehold or leasehold property or to any mortgage charge or other incumbrance on or any estate right or interest in any real or personal property which is part of the estate of any insolvent and which after the execution of such deeds conveyances assignments or other assurance either at law or in equity is or remains the estate of the insolvent or of the trustee under the insolvency and every power of attorney proxy paper writ order certificate affidavit bond or other instrument or writing relating solely to the property of an insolvent or to any proceeding under any insolvency shall be exempt from stamp duty except in respect of fees under this Act.

Exemption of
deeds from
stamp duty.
32 and 33 Vic.
c. 71, s. 112.

As to the property of the insolvent divisible amongst his creditors, see s. 87.

191. Every action brought against any person for anything done in pursuance of this Act shall be brought within six months next after the cause of action has arisen and the defendant in any such action may plead the general issue and give the special matter in evidence at the trial and if it shall appear that the matter complained of was done by authority of this Act or that such action was brought after the time limited as aforesaid for bringing the same the verdict shall be given for the defendant.

Limitation of
actions.

Plea.

38 Vic. No. 5.

Audit.

ss. 192-193.

Appointment of
accountant in
insolvency.

192. It shall be lawful for the Governor with the advice of the Executive Council to appoint a person to be called "the accountant in insolvency" for performing the duties of that office with such yearly salary as may be voted by Parliament for that purpose and such accountant shall be allowed such assistance and provided with such offices as may from time to time by the Governor in Council be thought fit. Such accountant shall not directly or indirectly by himself or any partner be engaged in practice before the Supreme or any inferior court and shall not directly or indirectly have any management or control over any moneys of any insolvent estate under charge of the courts of insolvency appointed by this Act. And the Governor in Council may as occasion may require remove or suspend such accountant and appoint another in his place and in case any such accountant shall die or obtain leave of absence or resign or leave the colony it shall be lawful for the Governor with the advice aforesaid to appoint another person to be accountant in his place either temporarily or permanently who shall in virtue of such appointment succeed to all the rights powers and duties of his predecessor.

As to the duties of the accountant, and to the books and accounts to be kept by the registrar and trustees, see rr. 172-186. For form of the register of insolvencies, see No. 84. As to the deposit of the records of the prior insolvent court with him, see s. 224.

Return of
accounts to
accountant.
32 and 33 Vic.,
c. 71, s. 56.

193. Every trustee of an insolvent shall from time to time as may be prescribed and not less than once in every six months during the insolvency transmit to such accountant a statement showing the proceedings in such insolvency up to the date of the statement containing the prescribed particulars and made out in

the prescribed form and any trustee failing to transmit 38 Vic. No. 5.
accounts in compliance with this section shall be ss. 194-195.
deemed guilty of a contempt of court and be punish-
able accordingly.

As to contempt of court, see s. 122 and notes thereto.

As to annual returns by trustees, see r. 185, as amended by Reg.
Gen., 17th August, 1877, r. 9, *post*.

As to the commencement of the insolvency, see s. 74; its close, s.
166.

As to the trustee's accounts being audited by the accountant in
insolvency where no committee of inspection is appointed, see Reg.
Gen., 17th August., 1877, r. 8, *post*.

194. The accountant shall examine the statements transmitted to him and shall call the trustee to account for any misfeasance neglect or omission which may appear on such statements and may require the trustee to make good any loss the estate of the insolvent may have sustained by such misfeasance neglect or omission. If the trustee fail to comply with such requisition of the accountant the accountant may report the same to the court and the court after hearing the explanation if any of the trustee shall make such order in the premises as it thinks just.

Duty of
accountant.
32 and 33 Vic.,
c. 71, s. 57.

As to the trustee's return of accounts to the accountant, see s.
193, r. 182; as to the conduct of the trustee, see r. 186; as to the
accountant's return, see s. 196.

195. The accountant may at any time require any trustee to answer any inquiry made by him in relation to any insolvency in which such trustee is engaged and may if he think fit apply to the court to examine on oath such trustee or any other person concerning such insolvency. He may also direct a local investigation to be made of the books and vouchers of the trustee.

Powers of
accountant.
32 and 33 Vic.,
c. 71, s. 58.

38 Vic. No. 5. As to the accountant's duties, see rr. 172-174, 186; as to the registrar's duties towards him, see r. 176; as to the accounts to be kept by trustees, see rr. 177, 178; as to their examination by the committee of inspection, see rr. 179-181; as to copies thereof being sent to the accountant, see rr. 182, 185; as amended by Reg. Gen., August 17th, 1877, r. 9, *post*; as to accountant's report on the trustee's account, see r. 183; as to investigation by the accountant, see s. 194.

Returns by
insolvency
officers.
32 and 33 Vic.,
c. 71, s. 115.

196. The registrars and other officers of the courts acting in insolvency shall make to the accountant in insolvency such returns of the business of their respective courts and officers at such times and in such manner and form as may be prescribed by the rules of court and from such returns the accountant shall in manner prescribed by the rules of court frame books (which shall be under the regulations of the rules of court open for public information and searches) and also a general annual report to the Attorney-General judicial and financial respecting all matters within this Act which report shall be laid before both Houses of Parliament.

For form of the registrar's insolvency book, see No. 85; the trustee's estate book, No. 86; the trustee's annual return, No. 87.

Release of Trustee.

Release of
trustee.
32 and 33 Vic.,
c. 71, s. 51.

197. When the insolvency is closed the trustee shall call a meeting of the creditors to consider an application to be made to the court for his release. At the meeting the trustee shall lay before the assembled creditors an account showing the manner in which the insolvency has been conducted with a list of the unclaimed dividends if any and of the property if any outstanding and shall inform the meeting that he proposes to apply to the court for a release.

A copy of such account shall be transmitted by the trustee to the accountant in insolvency at least four-

teen days before the trustee shall apply to the court for his release. The accountant shall make and present to the court a report upon such account and such other matters as he may think ought to be so reported.

38 Vic. No. 5.
s. 197.

The creditors assembled at the meeting may express their opinion as to the conduct of the trustee and they or any of them or the accountant may appear before the court and oppose the release of the trustee.

The court after hearing what if anything can be urged against the release of the trustee shall grant or withhold the release accordingly and if it withhold the release shall make such order as it thinks just charging the trustee with the consequences of any act or default he may have done or made contrary to his duty and shall suspend his release until such charging order has been complied with and the court thinks just to grant the release of the trustee.

As to the close of the insolvency, see s. 166; as to summoning meeting, see r. 105; as to general meetings, see ss. 128, 93; as to reports, see rr. 106, 107; as to accountant's report, see rr. 183, 184; as to the trustee's application for his release, see r. 105; for form thereof, and the order thereon, see No. 51; as to the effect of the order of the court releasing the trustee, see s. 199; as to the official trustee being trustee after the trustee's release, see r. 107.

The judge should have before him at the time of making the application for a release by a trustee, the following documents, the originals or properly authenticated copies of which should be on the file of the court.

- (1.) The order fixing the time and place for the application.
- (2.) The minutes of the meeting or a certified copy thereof.
- (3.) The trustee's account placed before the meeting.
- (4.) The accountant's report produced at the meeting on the trustee's account.
- (5.) The list of the creditors assembled at the meeting.

38 Vic. No. 5. (6.) The accountant's report on the trustee's account, &c., to the ss. 198-199. court.

Requisites of the trustee's and accountant's reports considered—*Re G. Nash*, 1 Q.L.J., 5.

A report of the trustee must be filed before the insolvent receives his certificate of discharge.—*Re L. Severin*, 1 Q.L.J., 59. Such report should show the causes from which the insolvency has arisen, and tend to show whether or not the insolvent should be held responsible for the same.—*Re Barker*, July 20th, 1881.

Duty of trustee as to unclaimed dividends and outstanding property. 32 and 33 Vic., c. 71, s. 52.

198. Unclaimed dividends and any other moneys arising from the property of the insolvent remaining under the control of the trustee at the close of the insolvency of any insolvent or accruing thereafter shall be accounted for and paid over to such account as may be directed by rules of court and any parties entitled thereto may claim the same in manner directed by such rules. The trustee shall also deliver a list of any outstanding property of the insolvent to the prescribed persons and the same shall when practicable be got in and applied for the benefit of the creditors in manner prescribed.

As to the property of the insolvent divisible amongst his creditors, see s. 87; as to the close of the insolvency, see s. 166; as to forfeiture of dividends after five years' non-claim, see s. 200; as to the operation of the trustee's release, see r. 107; as to account by trustee where he is removed, see r. 109; as to the list of outstanding property, see r. 108; as to books and documents, see r. 184.

Effect of release of trustee. 32 and 33 Vic., c. 71, s. 53.

199. The order of the court releasing the trustee of an insolvency shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the insolvent or otherwise in relation to his conduct as trustee of such insolvent but such order may be revoked by the court on proof that it was obtained by fraud.

As to making the order releasing the trustee, see s. 197; for form, see No. 51; as to its operation, see r. 107.

Unclaimed Dividends.

38 Vic. No. 5.

ss. 200-202.

200. Where any dividends remain unclaimed for five years then and in every such case the same shall be deemed vested in the Crown and shall be paid by the trustee into the Treasury to the credit of the Consolidated Revenue Fund Provided that at any time after such vesting any judge of the Supreme Court may in the case of the disability or absence beyond seas of a person entitled to the sum so vested or for any other reason appearing to him sufficient direct that the said sum shall be repaid out of money provided by Parliament.

Forfeiture of dividends after five years' non-claim.
32 and 33 Vic.
c. 71, s. 116.

As to the distribution of dividends, see s. 152; as to the duty of the trustee as to unclaimed dividends and outstanding property, see s. 198.

Insolvent Trustees.

201. Where an insolvent is a trustee within *The Trustees and Incapacitated Persons Act of 1867* section thirteen of that Act shall have effect so as to authorise the court to appoint a new trustee in substitution for the insolvent (whether voluntarily resigning or not) if it appears expedient to the court to do so and all provisions of that Act and of any other Act relative thereto shall have effect accordingly.

Removal of insolvent from trusteeship.
32 and 33 Vic.,
c. 71, s. 117.

As to the insolvency of trustees, the registered proprietors of land under "*The Real Property Act of 1861*" (25 Vic. No. 14), not affecting beneficiaries, see that Act, s. 86, *post*.

PART IX.—LIQUIDATION BY ARRANGEMENT.

Regulations.

202. The following provisions shall be made with respect to the liquidation by arrangement of the affairs of a debtor—

Regulations as to liquidation by arrangement.
32 and 33 Vic.
c. 71, s. 125.

38 Vic. No. 5.
s. 202.

(1.) A debtor unable to pay his debts may summon a general meeting of his creditors and such meeting may by a special resolution as defined by this Act declare that the affairs of the debtor are to be liquidated by arrangement and not in insolvency and may at that or some subsequent meeting held at an interval of not more than a week appoint a trustee with or without a committee of inspection.

As to the proceedings being instituted by petition and affidavit, see r. 187; for form of the petition, see No. 88; of the affidavit, No. 89; as to the petition requiring a £2 stamp, see table II.; as to the debtor stating in his petition the estimated amount of his debts, see r. 196.

As to place, date, and time of meeting, see r. 188; as to its being summoned by notice, see r. 189; for form of this notice, see No. 90; of affidavit of debt to be annexed thereto, No. 91.

As to mode of summoning first meetings, see r. 190; for form of request with list of creditors, see No. 92; as to time and manner of serving the notices, see r. 192; as to *Gazette*, r. 192; for form of the notice for the *Gazette*, see No. 93.

As to changing place of first meeting, see r. 193; for form of order changing it, see r. 94.

As to who are to be deemed creditors, see r. 221, s. 93, and the next subsection.

As to a special resolution, see s. 93 (7); as to the contents and requisites of the special resolution, see r. 209; for form of this resolution, where liquidation by arrangement resolved on, see No. 97; where composition, No. 98; as to the resolution containing a direction to transfer to another court, see r. 222; and the debtor's discharge, r. 236; the trustee's remuneration and security, r. 212.

As to registration of resolutions in certain cases being conclusive, see s. 203.

As to proxies, see rr. 70, 71, 203, 205; for form of, see No. 23.

As to proceedings by debtors in partnership, see rr. 219, 220.

As to costs, see r. 225.

As to restraining proceedings after presentation of the petition, 36 Vic. No. 5.
see rr. 194, 223. s. 202.

As to the appointment of a receiver, see rr. 194-199, 231-233; for form of, see No. 95.

Filing the petition is presentation to the judge, and the principal Case.
registrar may thereupon issue the notices.—March 30th, 1876.

- (2.) All the provisions of this Act relating to a first meeting of creditors and to subsequent meetings of creditors in the case of an insolvency including the description of creditors entitled to vote at such meetings and the debts in respect of which they are entitled to vote shall apply respectively to the first meeting of creditors and to subsequent meetings of creditors for the purposes of this section subject to the following modifications—

As to first meetings, see ss. 92, 93, and notes; others, s. 128; as to a creditor desiring to retire from any meeting, see r. 207; as to the debtor producing a statement to the meeting, see this section (3), and r. 208; for the form, see No. 28 (to be modified).

As to summoning meetings after the appointment of a trustee, by the trustee, see r. 238; by creditors, r. 239.

For form of list of creditors assembled to be used, see No. 96.

As to second meetings, see r. 211; for form of notice, see No. 99; or resolution, No. 100.

As to majorities for resolutions, see r. 227; as to validity of resolutions, notwithstanding adjournment, see r. 228.

As to proof of debts admitting notice of prior general meetings, see r. 244.

As to creditors abroad, see r. 243.

- (a.) That every such meeting shall be presided over by such chairman as the meeting may elect and

38 Vic. No. 5. As to the election of a chairman, see r. 202; his duties, rr. 205, s. 202. 210.

- (b.) That no creditor shall be entitled to vote until he has proved by a statutory declaration a debt provable in insolvency to be due to him and the amount of such debt with any prescribed particulars and any person wilfully making a false declaration in relation to such debt shall be guilty of a misdemeanor.

As to proof of debts, see r. 204, s. 140, rr. 245, 203, 205 (70, 71, No. 23), 247 (53-61), 206.

- (3.) The debtor unless prevented by sickness or other cause satisfactory to such meeting shall be present at the meeting at which the special resolution is passed and shall answer any inquiries made of him and he or if he is so prevented from being at such meeting some one on his behalf shall produce to the meeting a statement showing the whole of his assets and debts and the names and addresses of the creditors to whom his debts are due.

As to the debtor's statement, see r. 208; for form of, No. 28; as to the effect of the passing of a special resolution thereon, see r. 235; as to subsequently correcting a mistake in, see r. 240.

As to the debtor sending trustee information, see r. 235.

Unless the debtor produces at the meeting of his creditors a statement of his assets and debts with the names and addresses of his creditors, a motion that the affairs of the debtor be liquidated by arrangement cannot be carried and registered.—*Re J. H. Pengelley*, 2 Q.L.J., 127.

- (4.) The special resolution together with the statement of the assets and debts of the debtor and the name of the trustee appointed and

of the members (if any) of the committee of 38 Vic. No. 5.
inspection shall be presented to the princi- s. 202.
pal registrar and it shall be his duty to
inquire whether such resolution has been
passed in manner directed by this section
but if satisfied that it was so passed and
that a trustee has been appointed with or
without a committee of inspection he shall
forthwith register the resolution and the
statement of the assets and debts of the
debtor and such resolution and statement
shall be open for inspection on the pre-
scribed conditions and the liquidation by
arrangement shall be deemed to have com-
menced as from the date of the appointment
of the trustee.

As to registration, see rr. 209, 210; for form of affidavit, No. 102,
rr. 218, 229, 234, s. 179.

As to inspection of resolution and statement, see r. 230.

- (5.) All such property of the debtor as would if he were made insolvent be divisible among his creditors shall from and after the date of the appointment of a trustee vest in such trustee under a liquidation by arrangement and be divisible amongst the creditors and all such settlements conveyances transfers charges payments obligations and proceedings as would be void against the trustee in the case of an insolvency shall be void against the trustee in the case of liquidation by arrangement.

As to the insolvent's property divisible amongst his creditors,
see s. 87.

38 Vic. No. b. As to dividends, see r. 245, form No. 107, r. 246; for form of re-
s. 202. jection of proof, see No. 108, rr. 247, 248.

- (6.) The certificate of the principal registrar in respect of the appointment of any trustee in the case of a liquidation by arrangement shall be of the same effect as a certificate of the court to the like effect in the case of an insolvency.

As to this certificate, see r. 229; for its form, see No. 103; as to the evidence of the certificate of the trustee's appointment in insolvency, see s. 94.

Case.

A certificate of the appointment of the trustee signed by the Deputy-Registrar refused in evidence—*Regina v. Hicks*, September 2nd, 1885.

- (7.) The trustee under a liquidation shall have the same powers and perform the same duties as a trustee under an insolvency and the property of the debtor shall be distributed in the same manner as in an insolvency and with the modification hereinafter mentioned all the provisions of this Act shall so far as the same are applicable apply to the case of a liquidation by arrangement in the same manner as if the word "insolvent" included a debtor whose affairs are under liquidation and the word "insolvency" included liquidation by arrangement and in construing such provisions the appointment of a trustee under a liquidation shall according to circumstances be deemed to be equivalent to and a substitute for the presentation of a petition in insolvency or the service of such petition or an order of adjudication in insolvency.

As to the trustee's remuneration and security, see r. 212; as to his removal, see r. 241; and appointment of a new trustee, r. 242. 38 Vic. No. 5.
s. 202.

(8.) The creditors at their first or any general meeting may prescribe the bank into which the trustee is to pay any moneys received by him and the sum which he may retain in his hands.

(9.) The provisions of this Act with respect to the close of the insolvency discharge of an insolvent to the release of the trustee and to the audit of accounts by the accountant in insolvency shall not apply in the case of a debtor whose affairs are under liquidation by arrangement but the close of the liquidation may be fixed and the discharge of the debtor and the release of the trustee may be granted by a special resolution of the creditors in general meeting and the accounts may be audited in pursuance of such resolution at such time and in such manner and upon such terms and conditions as the creditors think fit.

As to the debtor's discharge, see r. 236; for the form, see No. 104.

Re R. Hughes and Co., Q.L.R., pt. 3, 42, cited in full under s. Case. 202 (12).

(10.) The trustee shall report to the principal registrar the discharge of the debtor and a certificate of such discharge given by the registrar shall have the same effect as a certificate of discharge given to an insolvent under this Act.

As to the report to the registrar and the debtor's discharge, see rr. 236, 237; for the form, see Nos. 105, 106.

38 Vic. No. 5.
ss. 202.

- (11.) Rules of court may be made in relation to proceedings on the occasion of liquidation by arrangement in the same manner and to the same extent and of the same authority as in respect of proceedings in insolvency.

The rules are rr. 187-248.

- (12.) If it appear to the court on satisfactory evidence that the liquidation by arrangement cannot in consequence of legal difficulties or of there being no trustee for the time being or for any sufficient cause proceed without injustice or undue delay to the creditors or to the debtor the court may on the petition of the debtor or of any creditor competent under this Act to present a petition for adjudication adjudge the debtor an insolvent and proceedings may be had accordingly.

As to insolvency during the liquidation, see rr. 200, 201, 209, 224, 226.

Cases.

Where it can be shown to the satisfaction of the court that proceedings in liquidation are of a character which require the interposition of the court it has power to adjudge a liquidating debtor insolvent.

One of two or more trustees in a liquidation cannot act without the others, unless the creditors on appointing them direct that he may.

When a creditor feels aggrieved by an act of a trustee in a liquidation and appeals to the court, he is as a rule entitled to his costs against the trustee if he succeeds.—*Re R. Hughes and Co.*, Q.L.R., pt. 3, 42.

Delay and certain alleged difficulties in winding up the estate held, under the circumstances, not sufficient grounds to warrant the court in making an adjudication in insolvency.—*Re Gray and Co.*, Q.L.R., pt. 3, 65.

- (13.) Where no committee of inspection is appointed the trustee may act on his own discretion in cases where he would otherwise have been bound to refer to such committee. 38 Vic. No. 5. ss. 203-204.

203. The registration by the registrar of a special resolution of the creditors on the occasion of a liquidation by arrangement under this part of this Act shall in the absence of fraud be conclusive evidence that such resolution was duly passed and all the requisitions of this Act in respect of such resolution complied with but any such registration may nevertheless be discharged by the court upon the application of any creditor upon sufficient cause shown. Registration of resolutions of creditors conclusive in certain cases. 32 and 33 Vic., c. 71, s. 127.

Re R. Hughes and Co., Q.L.R., pt. 3, 42, cited in full under Case. s. 202 (12).

PART X.—COMPOSITION WITH CREDITORS.

See notes to s. 202.

204. The creditors of a debtor unable to pay his debts may without any proceedings in insolvency by an extraordinary resolution resolve that a composition shall be accepted in satisfaction of the debts due to them from the debtor. Regulations as to composition by creditors. 32 and 33 Vic., c. 71, s. 126.

An extraordinary resolution of creditors shall be a resolution which has been passed by a majority in number and three-fourths in value of the creditors of the debtor assembled at a general meeting to be held in the manner prescribed of which notice has been given in the prescribed manner and has been confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting of which notice has been given in the prescribed

- 38 Vic. No. 5. manner and held at an interval of not less than seven
a. 204. days nor more than fourteen days from the date of
the meeting at which such resolution was first passed.

As to debts being proved before the payment of a dividend thereon, see r. 245; as to debts provable in insolvency being provable, see r. 204, s. 140; as to the mode of proof, see rr. 203, 205, 247, 53-61; as to the amount of a secured creditor's proof, see r. 206; as to creditors appointing proxies, see rr. 203, 70, 71, 205; for the form of a proxy, see No. 23.

As to the proceedings where the debtors are in partnership, see rr. 219-221.

As to the notice summoning the first meeting, see r. 189. For form of notice, see No. 90; of the affidavit to be annexed thereto, No. 91. As to the mode of sending the notices, see rr. 190, 192; for the form of the request, see No. 92; as to *Gazette* notice, see r. 191, form No. 93; as to creditors who are resident abroad, see r. 243; as to creditor proving being deemed to have notice of prior meetings, see r. 244.

As to subsequent meetings, see r. 216; for form of notice of, No. 99; as to a resolution thereat for liquidation by arrangement, see r. 217; for form of resolution, No. 100.

As to what the resolution should specify, see rr. 209, 213-215, 222; as to what resolutions will be taken notice of by the court, see r. 209; for form of, see No. 98; as to the majority, see r. 227; as to adjournment, see r. 228; as to evidence of the resolution, see s. 205; as to the debtor's statement to be produced to the meeting, see *post*, paragraph 9, and r. 208, form No. 28.

As to subsequent meetings by trustees, see r. 238; by creditors, r. 239; for the form of the list of creditors to be used at meetings, see No. 96; as to a creditor retiring from a meeting, see r. 207.

As to the election of a chairman, see r. 202; as to his duties, rr. 205, 210.

As to the trustee and his appointment, see r. 213; his removal, rr. 241, 242.

In calculating a majority for the purposes of a composition under this section the value of the debts of secured creditors shall as nearly as circumstances admit be estimated in the same way and the same

description of creditors shall be entitled to vote at such general meetings as in insolvency.

See ss. 93, 128, 140.

The debtor unless prevented by sickness or other cause satisfactory to such meetings shall be present at both the meetings at which the extraordinary resolution is passed and shall answer any inquiries made of him and he or if he is so prevented from being at such meetings some one on his behalf shall produce to the meeting a statement showing the whole of his assets and debts and the names and addresses of the creditors to whom such debts respectively are due.

As to the statement, see r. 208, form No. 28 ; as to the correction of mistakes, see paragraph 9, *post*, and r. 240 ; as to description of creditors, whose names are unknown to the debtor, holding bills of exchange, see that paragraph and form No. 101.

The extraordinary resolution together with the statement of the debtor as to his assets and debts shall be presented to the registrar and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section and if satisfied that it has been so passed he shall forthwith register the resolution and statement of assets and debts but until such registration has taken place such resolution shall be of no validity and any creditor of the debtor may inspect such statement at prescribed times and on payment of such fee if any as may be prescribed.

As to the person by whom the registration is to be made, see r. 209 ; as to who is to receive proofs and proxies, see r. 210 ; as to the registration of proofs, proxies, statements and resolutions, see r. 218 ; for form of affidavit, see No. 102. As to the debtor's oath, and the registrar's duties on registration, see next paragraph, and rr. 229, 234 ; as to evidence of registered resolution, see s. 205 ; as

38 Vic. No. 5. to the registered resolution and statement being open for inspection,
s. 204. see r. 230; as to every application for search being liable to a 1s.
stamp, see table II.

Before any such registration shall be made the debtor shall make oath that he has fully and truly to the best of his knowledge disclosed all his assets and liabilities and the names of his creditors and the amount of their debts and that he has not granted or promised any payment or security or made or promised any preference of any creditor or entered into any collusive agreement for the purpose of obtaining assent to the resolution and such oath shall be presented to the registrar and be registered with the resolution.

The creditors may by an extraordinary resolution add to or vary the provisions of any composition previously accepted by them without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation and any such extraordinary resolution shall be presented to the registrar in the same manner and with the same consequences as the extraordinary resolution by which the composition was accepted in the first instance.

The provisions of a composition accepted by an extraordinary resolution in pursuance of this section shall be binding on all the creditors whose names and addresses and the amount of the debts due to whom are shown in the statement of the debtor produced to the meetings at which the resolution has passed but shall not affect or prejudice the rights of any other creditors.

Where a debt arises on a bill of exchange or

promissory note if the debtor is ignorant of the holder of any such bill of exchange or promissory note he shall be required to state the amount of such bill or note the date on which it falls due the name of the acceptor or person to whom it is payable and any other particulars within his knowledge respecting the same and the insertion of such particulars shall be deemed a sufficient description of the creditor of the debtor in respect of such debt and any mistake made inadvertently by a debtor in the statement of his debts may be corrected after the prescribed notice has been given with the consent of a general meeting of his creditors.

38 Vic. No. 5.
s. 204.

For form of list of bills or notes on which the debtor is liable, and of the holder whereof he is ignorant, see No. 101.

As to correcting mistakes, see also r. 240.

The provisions of any composition made in pursuance of this section may be enforced by the court on a motion made in a summary manner by any person interested and any disobedience of the order of the court made on such motion shall be deemed to be a contempt of court.

For form of application, see No. 67; of affidavit in support, No. 68; of order enforcing, No. 69.

As to contempt of court, see s. 122 and note thereto; for form of affidavit, see No. 73; of the notice of the application, No. 76; order, No. 79; warrant, No. 80.

Rules of court may be made in relation to proceedings on the occasion of the acceptance of a composition by an extraordinary resolution of creditors in the same manner and to the same extent and of the same authority as in respect of proceedings in insolvency. If it appear to the court on satisfactory evidence that a composition under this section cannot

38 Vic. No. 5. in consequence of legal difficulties or for any sufficient
 ss. 205-206. cause proceed without injustice or undue delay to the
 creditors or to the debtor the court may adjudge the
 debtor an insolvent and proceedings may be had
 accordingly.

For these rules, see rr. 187-248; as to the power to make rules
 generally, see ss. 27-29.

As to insolvency before the composition is completed, see rr. 200,
 201, 226.

As to restraining proceedings, see r. 194; as to appointing a
 receiver, see rr. 194-199; for form, see No. 95; as to the determina-
 tion of his duties, rr. 231, 232; as to transfer of proceedings, see r.
 222.

Registration of
 resolution
 conclusive.
 32 and 33 Vic.,
 c. 71, s. 127.

205. The registration by the registrar of an extra-
 ordinary resolution of the creditors under this part of
 the Act shall in the absence of fraud be conclusive
 evidence that such resolution was duly passed and all
 the requisitions of this Act in respect thereof complied
 with but any such registration may nevertheless be set
 aside or discharged by the court upon the application
 of any creditor upon sufficient cause shown.

PART XI.—OFFENCES.

Punishment of
 fraudulent
 debtors.
 32 and 33 Vic.,
 c. 62, s. 11.

206. Any person adjudged insolvent and any person
 whose affairs are liquidated by arrangement in pursu-
 ance of this Act shall in each of the cases following be
 deemed guilty of a misdemeanor and on conviction
 thereof shall be liable to be imprisoned for any time
 not exceeding three years with or without hard labor
 that is to say—

As to property deliverable up to the trustee, see ss. 87-122;
 "property," s. 4.

Ibid 1.

- (1.) If he does not to the best of his knowledge
 and belief fully and truly discover to the
 trustee administering his estate for the benefit

of his creditors all his property real and personal and how and to whom and for what consideration and when he disposed of any part thereof except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family unless the jury is satisfied that he had no intent to defraud. ^{38 Vic. No. 5. s. 206.}

- (2.) If he does not deliver up to such trustee or as he directs all such part of his real and personal property as is in his custody or under his control and which he is required by law to deliver up unless the jury is satisfied that he had no intent to defraud. ^{32 and 33 Vic., c. 62, s. 11 (2).}
- (3.) If he does not deliver up to such trustee or as he directs all books documents papers and writings in his custody or under his control relating to his property or affairs unless the jury is satisfied that he had no intent to defraud. ^{Ibid 3.}
- (4.) If after the presentation of the petition for adjudication or the commencement of the liquidation or within four months next before such presentation or commencement he conceals any part of his property to the value of ten pounds or upwards or conceals any debt due to or from him unless the jury is satisfied that he had no intent to defraud. ^{Ibid 4.}
- (5.) If after the presentation of the petition for adjudication or the commencement of the liquidation or within four months next before such presentation or commencement he ^{Ibid 5.}

38 Vic. No. 5.
s. 206.

fraudulently removes any part of his property to the value of ten pounds or upwards.

32 and 33 Vic.,
c. 62, s. 11 (6).

(6.) If he makes any material omission in any statement relating to his affairs unless the jury is satisfied that he had no intent to defraud.

Ibid 7.

(7.) If knowing or believing that a false debt has been proved by any person under the insolvency or liquidation he fail for a period of a month to inform such trustee as aforesaid thereof.

Ibid 8.

(8.) If after the presentation of the petition for adjudication or the commencement of the liquidation he prevents the production of any book document paper or writing affecting or relating to his property or affairs unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.

Ibid 9.

(9.) If after the presentation of the petition for adjudication or the commencement of the liquidation or within four months next before such presentation or commencement he conceals destroys mutilates or falsifies or is privy to the concealment destruction mutilation or falsification of any book or document affecting or relating to his property or affairs unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.

Ibid 10.

(10.) If after the presentation of the petition for adjudication or the commencement of the

liquidation or within four months next before ^{38 Vic. No. 5.} such presentation or commencement he ^{s. 206.} makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.

- (11.) If after the presentation of the petition for ^{32 and 33 Vic.,} adjudication or the commencement of the ^{c. 62, s. 11 (11).} liquidation or within four months next before such presentation or commencement he fraudulently parts with alters or makes any omission or is privy to the fraudulently parting with altering or making any omission in any document affecting or relating to his property or affairs.
- (12.) If after the presentation of the petition for ^{Ibid 12.} adjudication or the commencement of the liquidation or at any meeting of his creditors within four months next before such presentation or commencement he attempts to account for any part of his property by fictitious losses or expenses.
- (13.) If within four months next before the pre- ^{Ibid 13.} sentation of the petition for adjudication or the commencement of the liquidation he by any false representation or other fraud has obtained any property on credit and has not paid for the same.
- (14.) If within four months next before the pre- ^{Ibid 14.} sentation of the petition for adjudication or

38 Vic. No. 5.
s. 206.

the commencement of the liquidation he obtains under the false pretence of carrying on business and dealing in the ordinary way of trade any property on credit and has not paid for the same unless the jury is satisfied that he had no intent to defraud.

32 and 33 Vic.,
c. 62, s. 11 (15).

- (15.) If within four months next before the presentation for the petition for adjudication or the commencement of the liquidation he pawns pledges or disposes of otherwise than in the ordinary way of trade any property which he has obtained on credit and has not paid for unless the jury is satisfied that he had no intent to defraud.

Case.

Regina v. Pieremont, 2 Q.L.J., 93.

32 and 33 Vic.,
c. 62, s. 11 (16).

- (16.) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his insolvency or liquidation.

- (17.) If he has omitted to keep proper books of account showing the true state of his affairs unless the jury is satisfied that he had no intention to conceal the true state of his affairs or to defraud.

Cases.

Insolvent held to bail self and two sureties to the satisfaction of the Registrar, to appear before a J.P. and answer a charge under this section (15) or any other charge against him under this Act within seven days.—*Re Pieremont*, August 28th, 1885. On a later day, the insolvent not finding sureties, was committed to gaol. A similar order *re W. A. Good*, February 4th, 1886. A similar application was refused, *re Pattison & Co.*, February 17th, 1886, and *re Wileman*, July 16th, 1886.

207. If any person who shall be adjudged insolvent 38 Vic. No. 5. or whose affairs shall be liquidated by arrangement in ss. 207-208. pursuance of this Act shall after the presentation of the petition for adjudication or the commencement of the liquidation or within four months before such presentation or commencement quit Queensland and take with him or attempt or make preparation for quitting Queensland and for taking with him any part of his property to the amount of twenty pounds or upwards which ought by law to be divided amongst his creditors he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of felony and on conviction thereof shall be liable to be imprisoned for any time not exceeding three years with or without hard labour.

Penalty for absconding with property.
32 and 33 Vic.,
c. 62, s. 12.

As to Gazette being evidence, see s. 70 and notes. As to commencement of liquidation, see 202 (4) as to meaning of "property," see s. 4; "divisible property," s. 87.

208. Any person shall in each of the cases following be deemed guilty of a misdemeanor and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year with or without hard labour that is to say—

Penalty on fraudulently obtaining credit, &c.
32 and 33 Vic
c. 62, s. 13.

- (1.) If in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud.
- (2.) If he has with intent to defraud his creditors or any of them made or caused to be made any gift delivery or transfer of or any charge on his property.
- (3.) If he has with intent to defraud his creditors concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or

38 Vic. No. 5.
ss. 209-211.

order for payment of money obtained against him.

As to meaning of "property," see s. 4; "divisible property," s. 87.

False claim, &c.,
a misdemeanor.
32 and 33 Vic.,
c. 62, s. 14.

209. If any creditor in any insolvency or liquidation by arrangement or composition with creditors in pursuance of this Act wilfully and with intent to defraud makes any false claim or any proof declaration or statement of account which is untrue in any material particular he shall be guilty of a misdemeanor punishable with imprisonment for any time not exceeding one year with or without hard labour.

Penalty for
concealing
property of
insolvent.

210. Any person who shall wilfully conceal any part of the property of an insolvent and who shall not within forty-two days after adjudication discover such property to the trustee or registrar shall upon proof thereon to the satisfaction of the court pay to the trustee the sum of one hundred pounds and double the value of the property so concealed and shall also be liable on conviction thereof before the court or two justices to be imprisoned for any time not exceeding six months with or without hard labour.

As to meaning of "property," see s. 4; "divisible property," s. 87.

Offence of
receiving,
embezzling, &c.,
property under
attachment.

211. Any person who shall receive remove retain conceal embezzle or dispose of any part of the property of an insolvent which has been attached under this Act knowing the same to have been so attached and with intent to hinder or defeat the attachment shall be guilty of a misdemeanor and shall be liable on conviction thereof to be imprisoned for any time not exceeding three years with or without hard labour.

See note to last section.

212. Any person who shall wilfully hinder or obstruct any messenger or other person charged with the execution of any order or warrant of the court shall on conviction thereof before the court or two justices be liable to be imprisoned for any time not exceeding six months or to forfeit and pay a sum not exceeding one hundred pounds.

38 Vic. No. 5.
ss. 212-215.

Offence of
hinder-
ing
officers of the
court

213. Any person who shall receive or accept any property from any insolvent or forming part of the estate of any insolvent with intent to defraud the creditors of the insolvent shall be guilty of a misdemeanor and shall be liable on conviction thereof to be imprisoned for any period not exceeding three years with or without hard labour.

Offence of
receiving
insolvent's
property with
intent to
defraud.

See note to section 10.

214. Any person who shall insert or cause to be inserted in the *Gazette* or in any newspaper any advertisement purporting to be under this Act or the general rules without authority or knowing the same to be false in any material particular shall be guilty of a misdemeanor and shall be liable on conviction thereof to be imprisoned for any time not exceeding two years with or without hard labour.

Offence of
inserting
advertisement
without
authority.

215 Where a debtor makes any arrangement or composition with his creditors under the provisions of this Act he shall remain liable for the unpaid balance of any debt which he incurred or increased or whereof before the date of the arrangement or composition he obtained forbearance by any fraud provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

Debts incurred
by fraud.
32 and 33 Vic.,
c. 62, s. 15.

38 Vic. No. 5. As to the certificate of discharge not releasing the insolvent from ss. 216-217. frauds or breaches of trust, see s. 173.

Power of court to commit summarily in certain cases.

216. If at any examination of any insolvent held before the court or before any examining court as defined by this Act it shall appear to the court that the insolvent has been guilty of any offence under this Act or of perjury the court may without any further proceedings commit the insolvent to take his trial for such offence or may hold him to bail to appear before a justice of the peace to answer any charge that may be preferred against him for any such offence and for such purpose shall have all the powers that a justice of the peace would have if such insolvent had been brought before him and charged with such offence.

As to examination, see ss. 73, 114, 165. As to costs of prosecution, see s. 218.

Cases.

Examples of committals.—*Re King and Redmond*, October 4th, 1875; *re Medhurst*, 24th August, 1876.

Order by court for prosecution on report of trustee.
32 and 33 Vic., c. 62, s. 16.

217. Where a trustee in any insolvency reports to the court that in his opinion an insolvent has been guilty of any offence under this Act or where it is represented to the court by any creditor or member of the committee of inspection that there is ground to believe that the insolvent has been guilty of any offence under this Act the court shall if it appears to the court that such report or representation is true and that there is a reasonable probability that the insolvent may be convicted order the trustee to prosecute the insolvent for such offence and may hold the insolvent to bail to appear before a justice of the peace to answer the charge to be preferred against him for such offence.

As to costs of the prosecution, see s. 218.

38 Vic. No. 5.
ss. 218-221.

Example of committals.—*Re Sheehy*, Nov. 14th, 1883.

Case.

218. Where the prosecution of an insolvent under this Act is ordered by the court or where the insolvent is committed for trial by order of the court or of an examining court then on the production of the order of such court all the expenses of the prosecution shall be paid and borne by the Crown.

When prosecution ordered by court expense to be borne by the Crown.
32 and 33 Vic., c. 62, s. 17.

In other cases the expenses of the prosecution of an insolvent for an offence under this Act up to the time of his commitment for trial shall be paid and borne by the person or persons instituting such prosecution.

When prosecution not ordered by the court costs to be paid by persons prosecuting.

219. In an indictment for an offence under this Act it shall be sufficient to set forth the substance of the offence charged in the words of this Act specifying the offence or as near thereto as circumstances admit without alleging or setting forth any debt act of insolvency adjudication or any proceeding in or order warrant or document of any court acting under the authority of this Act.

Form of indictment.
32 and 33 Vic., c. 62, s. 19.

220. Any offence under this Act shall be deemed to be within the criminal jurisdiction of the district courts anything in "*The District Courts Act of 1867*" to the contrary notwithstanding.

Jurisdiction over offences.
32 and 33 Vic., c. 62, s. 20.

221. Where any person is liable under any other Act of Parliament or at common law to any punishment or penalty for any offence made punishable by this Act such person may be proceeded against under such other Act of Parliament or at common law or under this Act so that he be not punished twice for the same offence.

Punishments under this Act cumulative.
32 and 33 Vic., c. 62, s. 23.

38 Vic. No. 5. PART XII.—ABOLITION OF OFFICES, DISPOSAL OF
ss. 222-225. RECORDS, &c.

Certain offices
abolished.

222. Subject to the provision for the completion of matters pending in the insolvency jurisdiction of the Supreme Court at the commencement of this Act the following offices shall be abolished—

The office of official assignee of insolvent estates created under the said repeal Act and all offices held under or by appointment of any official assignee.

Construction of
Acts mentioning
assignees in
insolvency.

223. Where in any Act of Parliament instrument or proceeding passed executed or taken before the commencement of this Act mention is made of official assignees creditors' assignees or assignees of insolvent estates the same shall be construed with reference to matters and proceedings under this Act as if trustees were mentioned therein.

Records of
insolvent court
prior to
commencement
of this Act to be
deposited with
accountant in
insolvency.

224. All records books papers and documents heretofore or at the commencement of this Act in the custody of the official assignees under "*The Insolvency Act of 1864*" shall where the cases to which they refer have terminated and where cases are still pending before the Supreme Court in insolvency under the said Act as soon as they shall respectively terminate be deposited with the accountant in insolvency who shall classify and register the same in such manner as may be directed by a judge of the Supreme Court.

As to the appointment of the accountant in insolvency, see s. 192.

Disposal of
unclaimed
moneys.

225. At the expiration of two years from the commencement of this Act all moneys then standing to the credit of "The Unclaimed Dividend Fund" under

"*The Insolvency Act of 1864*" and all other moneys ^{38 Vic. No. 5}
the produce of the estate of any person adjudged s. 225.
insolvent under the said Act which shall then be in
the hands of the official assignee under that Act shall
be paid to the credit of the consolidated revenue of the
colony subject to any order of the court for the pay-
ment thereof of any dividend due to any creditor or
for the distribution of any such unclaimed money.

40 Vic. No. 12

Preamble.

THE INSOLVENCY ACT AMENDMENT ACT
OF 1876.

40 VICTORIA No. 12.

An Act to Amend "The Insolvency Act of 1874."

[Assented to 22nd November, 1876.]

Preamble.

WHEREAS by the seventy-third section of "*The Insolvency Act of 1874*" it is enacted that the court may in certain cases therein mentioned summon any person to attend before a Police Magistrate And whereas by the one hundred and fourteenth section of the said Act it is enacted that the court may in certain cases therein mentioned order any person to attend before a Police Magistrate for the purpose of examination And whereas by the one hundred and sixty-fifth section of the said Act it is enacted that the court may order that the last examination of any insolvent shall be held before a Police Magistrate And whereas it is expedient that the provisions of the said several sections of the said Act should not apply to the Police Magistrates at Brisbane or Bowen and that the said Act be otherwise amended Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

1. Notwithstanding anything in the said recited ^{40 Vic. No. 12} sections contained it shall not be lawful for the court ^{ss. 1-3.} to summon or order any person to attend before the police magistrate at Brisbane or Bowen for any of the purposes in the said sections mentioned or to order the last examination of any insolvent to be held before the said police magistrates or either of them And the said police magistrates shall not nor shall either of them have any authority or jurisdiction for the purposes in the said several sections mentioned.

Police magistrates at Brisbane and Bowen not to have jurisdiction under sections 73, 114 and 165 of principal Act.

2. So much of section 166 of the said recited Act ^{Repeal of part of section 166.} as is contained in the words "if no such order has been made at the time of granting a certificate of discharge as hereinafter provided the court shall on granting such certificate also make an order that the insolvency has closed" shall be and the same is hereby repealed And the said Act shall hereafter be read and construed as if the words aforesaid had not been contained therein.

3. This Act may be cited as "*The Insolvency Act* ^{Short title.} *Amendment Act of 1876.*"

General Rules

1st Oct., 1874.

r. 1.

GENERAL RULES IN INSOLVENCY.

IN pursuance of "*The Insolvency Act of 1874*," 38 Victoria, No. 5, and of all other powers and authorities in that behalf, IT IS ORDERED by the Judges of the Supreme Court of Queensland as follows, that is to say:—

Definition of Terms.

Interpretation.
E.R. 1 *

1. In the construction of these rules and forms, the following terms shall (if not inconsistent with the context or subject-matter) have the respective meanings hereinafter assigned to them, that is to say:—

"The Act" shall mean "*The Insolvency Act of 1874*."

"Court" shall mean the court having jurisdiction in the matter;

"Judge" shall mean the judge of any such court;

"Debtor" shall include a firm of debtors in partnership;

"Attorney" shall mean any attorney, or solicitor entitled to practice in any such court;

"Name" of any person shall mean both the christian name or the initial letter or contraction of the christian name and the surname of such person;

"Gazetted" shall mean that the notice or thing is to be published in the *Queensland Government Gazette*;

"Sealed" shall mean sealed with the seal of the court;

* The English Rules referred to in the margin as E.R. are the General Rules made in England in pursuance of "The Bankruptcy Act of 1890" (32 & 33 Vic. c. 71), and dated the 1st of January, 1890.

And, unless there be something in the context inconsistent therewith, the provisions of "*The Acts Shortening Act of 1867*," and of section 4 of the Act, shall apply to these rules. General Rules
1st Oct., 1874.
rr. 2-5.

Sittings in Chambers.

2. Any matter may be heard and disposed of in chambers by a judge, except the examination of the insolvent under section 164 of the Act, and the granting of a certificate of discharge. Matters to be
heard in
chambers.
E.R. 5.

3. Where the judge shall be of opinion that any matter ought to be heard and disposed of in open court, or all the contending parties shall require any matter to be so heard and disposed of, such matter shall be so heard and disposed of; or if part heard, shall be adjourned for the purpose of being further heard and disposed of in open court. Matters to be
heard in open
court.
E.R. 6.

Proceedings.

4. In matters under the Act the proceedings may be in the several forms set forth in the schedule attached to these rules, or as near thereto as possible; and where forms for any proceeding in such matters are not provided in the schedule, the forms required may be framed by the parties, using as guides those so provided, so far as they are applicable. Forms to be
used.
E.R. 7.

5. All proceedings of the court shall remain of record in the court, so as to form a complete record of each matter, and they shall not be removed for any purpose, except for the use of the officers of the court or by direction of the judge or upon subpoena *duces tecum* from some competent court, but they may at all reasonable times be inspected by the trustee, the insolvent, and any creditor who has proved, or any person on their behalf. Custody and
inspection of
records.
E.R. 9.

Every application for search for proceedings requires a 1s. stamp, see table II.

General Rules 6. All summonses, petitions, notices, orders, warrants,
1st Oct., 1874. and other process issued by the court shall be sealed.

rr. 6-9.

**Proceedings to
be sealed.**
E. R. 10.

Meetings.
E. R. 11.

Every petition is to be dated the day on which it is signed, *Reg. Gen.*, 17th August, 1877, r. 6, *post*.

7. [Sect. 125.] Where the court orders a general meeting of creditors to be summoned under section 125 of the Act, it shall be summoned as the court directs, and in default of any direction the registrar shall transmit a sealed copy of the order to the trustee fourteen days at least before the time appointed for the meeting to take place, and the trustee shall, ten days before such meeting, send a copy of the order to each creditor, or to his attorney, at the address given in his proof, or when he shall not have proved, the address given in the list of creditors by the insolvent, or such other address as may be known to the trustee.

As to service of notices by post, see r. 14; evidence of sending notices, see r. 83; as to some creditors not receiving notices, see r. 82; as to notice of meeting summoned by trustees, see r. 80. For form of order of court for a general meeting of creditors, see No. 20.

Office copies.
E. R. 12.

8. All office copies of petitions, proceedings, books, papers, and writings, or any parts thereof required by any trustee, or by any person being an insolvent or debtor who has instituted proceedings under sections 202 or 204 of the Act, or by any creditor of any such person, or attorney of any such person or creditor, shall be provided by the registrar, and shall, except as to figures, be fairly written at length, and be sealed with the seal of the court, and delivered out without any unnecessary delay, and in the order in which they shall have been bespoken, and be charged and paid for at the rate of four-pence per folio of seventy-two words.

Every office copy requires a stamp fee of 4d. for each folio of seventy-two words.

**Filing Gazettes
and newspapers.**
E. R. 13.

9. In lieu of attaching a copy of the *Gazette* to the proceedings in each insolvency or other matter, the

registrar shall file with the proceedings the page of the *General Rules Gazette* in which the advertisement occurs, and in case of an advertisement in a local paper, he shall file the advertisement with a memorandum of the name of the paper and date of its publication; and for this purpose one copy of every *Gazette* and of each local newspaper in which any notice in any matter of insolvency in such court is inserted shall be left with the registrar by the person inserting the notice.

10. All notices and other proceedings, for the delivery of which no special mode is prescribed, may be sent by prepaid post letter to the last known address of the person to be served therewith.

Service of notices, &c., by post.
E.R. 14.

As to evidence of sending notices, see r. 83.

Declaration of Inability to Pay Debts.

11. [Sect. 44.] A declaration by a debtor admitting his inability to pay his debts shall be dated, signed, and witnessed according to the form in the schedule.

Declaration of insolvency.
E.R. 16.

Every declaration by a debtor of inability to pay his debts requires a 1s. stamp, see table II; for its form, see No. 1.

Debtor's Summons.

12. A debtor's summons against any debtor to any co-partnership duly authorised to sue and be sued in the name of a public officer or agent of such co-partnership, may be sued out by such public officer or agent as the nominal plaintiff for and on behalf of such co-partnership, on such public officer or agent filing an affidavit, according to the form in the schedule, stating that he is such public officer or agent, and that he is authorised to sue out such petition or debtor's summons. Where a corporate body is plaintiff, any affidavit in support of such petition or debtor's summons may be made by a director or other officer on its behalf.

Petition or summons by a company.
E.R. 15.

General Rules See note to the next rule. For the form of a debtor's summons, 1st Oct., 1874. see No. 4.

rr. 13-17.

Affidavit to be filed and summons lodged.
E.R. 18.

13. A creditor desirous that a debtor's summons may be granted must file an affidavit for the truth of his debt, and lodge the summons, together with two copies thereof and three copies of his particulars of demand.

Every affidavit filed other than proof of debts requires a 1s. stamp, see table II; for forms of affidavits, see Nos. 2, 3; as to a company proving by an agent, see r. 55, s. 177 (7); for the form of, see No. 24.

Particulars of demand.
E.R. 19.

14. The particulars of demand shall be expressed with reasonable and convenient certainty as to dates and all other matters, but no objection shall be allowed to the particulars unless the court shall consider that the debtor has been misled by them.

Particulars of demand to be sealed and filed.
E.R. 20.

15. The registrar shall seal such particulars, and such particulars shall then be deemed part of the summons, and the original summons shall be filed and the copies be sealed and issued to the creditor.

Time for debtor to pay debt.

16. [Sec. 44.] The time to be specified in a debtor's summons for the debtor to pay the debt shall be the same time that is allowed for a defendant to apply for leave to appear to a writ under "*The Bills of Exchange Act of 1867*." Provided that such time may in any case be extended by the court on the application of the debtor.

By Reg. Gen. of 15th January, 1868, since annulled, it was provided that the return of writs under "*The Bills of Exchange Act of 1857*" (now repealed) should be the same as that of writs of summons in an ordinary action, for which see O. II, r. 6.

As to the effect of abrogated rules and the application of the "Rules of the Supreme Court," see O. LIX, r. 1a.

Indorsement of name on summons.
E.R. 21.

17. Every debtor's summons shall be indorsed with the name and place of business of the attorney actually suing out the same; but in case no attorney shall be employed for the purpose, then with a memorandum expressing that the same has been sued out by the creditor in person.

For form of debtor's summons, see No. 4. Every debtor's General Rules summons requires a 5s. stamp, see table II.

1st Oct., 1874.

rr. 18-21.

18. [Sects. 48 and 49.] There shall be indorsed on the debtor's summons, in addition to an intimation of the consequences of neglect to comply with the requisitions of the summons, a notice to the debtor that if he disputes the debt and desires to obtain the dismissal of the summons he must file an affidavit with the registrar within the time allowed for his appearance, stating that he is not so indebted, or only so to a less amount than £50.

Indorsement
of notice on
summons.
E.R. 22.

For form of a debtor's summons, see No. 4; for form of affidavit on the application to dismiss, see No. 5.

19. Where a debtor files the above-mentioned affidavit, the registrar shall fix the time and place at which the application for the dismissal of the summons will be heard by the court, and give notice thereof to the creditor and debtor three days before the day so fixed.

Application to
dismiss
summons.
E.R. 23.

20. [Sect. 49.] Where proceedings on a debtor's summons have been stayed for the trial of the question of the validity of the debt claimed therein, and such question has been decided against the validity of the debt, the debtor, on production of the judgment of the court, or an office copy thereof, shall be entitled to have the debtor's summons dismissed, and, if the court thinks fit, with costs; but the order for costs shall not be enforced for seven days, or where the creditor has lodged a notice showing that he has taken the necessary steps to set aside the judgment, until after the final decision thereon.

Dismissal of
summons after
trial of validity
of debt.
E.R. 24.

For form of the order on the application to dismiss, see No. 6.

21. Where proceedings on a debtor's summons are stayed upon security being given, the creditor shall take or continue proceedings for the payment of the debt within twenty-one days of the date on which the security was completed, and shall prosecute the same with effect and

Prosecution of
claim where
proceeding on
summons
stayed.
E.R. 25.

General Rules without delay, and if he fail so to do the debtor shall be 1st Oct., 1874. entitled to have the summons dismissed with costs.

rr. 22-24.

Debtor's Petition.

Adjudication.

22. [Sect. 43.] The court will adjudicate upon a debtor's petition on the application of the debtor, but it will not proceed to adjudicate except on such application. No such application will be entertained after the lapse of four weeks from the date when the petition reaches the principal registry.

For the purposes of s. 32, the petition will be deemed to have been dismissed where application has not been made as required by this rule, and no formal application for dismissal is necessary. — Rules, 17th Aug., 1877, r. 10, *post*. As to receiver's expenses in such cases, see *ibid*, r. 11.

Creditors' Petition.

Affidavit in support of petition by several creditors.
E.R. 30.

23. Where a petition is presented by two or more creditors not in partnership, each creditor must depose to the truth of such of the statements in the petition as are within his own knowledge, either in a joint or separate affidavit.

Every affidavit filed other than proof of debts requires a 1s. stamp, see table II.

Receiver appointed after presentation of petition.
E.R. 33.

24. [Sect. 77.] After the presentation of a petition upon the application of a creditor and upon proof by affidavit of sufficient grounds for the appointment of a receiver or manager of the property or business of the debtor, or any part thereof, the court may, if it thinks fit, make such appointment; and where the petition is dismissed the creditor shall pay such costs of the receiver or manager as the court may direct, and the court shall, if required adjudicate with respect to any damages or claim thereto arising out of his appointment, or make such order thereon as he thinks fit, and such order shall be final and conclusive between the parties, and between them or either

of them and the receiver or manager, unless the decision be appealed from.

General Rules
1st Oct., 1874.
rr. 25-28.

For the form of the application for the appointment of a receiver or manager, and order thereon, see No. 7.

25. [Sect. 59.] The time for appearance to a petition shall, unless the court shall otherwise order, be the same time as is allowed for appearing to a writ in an action at common law.

Time for
appearance
to petition.

As to the time now allowed for appearance to an action, see O. II, r. 6.

As to the application of the "Rules of the Supreme Court," see O. LIX, r. 1a.

26. Where there are more respondents than one to a petition, the rules as to service shall be observed with respect to each respondent; but where all the respondents have not been served, the petition may be heard separately or collectively as to the respondent or such of the respondents as has or have been served, and separately or collectively as to the respondents not then served, according as service upon them is effected.

Hearing of
petition where
some
respondents
not served.
E.R. 35.

As to the service of the petition, see rr. 46-52. See s. 68 as to petitions against partnerships.

27. [Sect. 61.] Where a debtor intends to show cause against a petition he shall, at the time of entering the appearance, file a notice with the registrar showing the statements in the petition which he intends to deny or dispute.

Opposing
petition.
E.R. 36.

As to the court adjudging debtor insolvent on another petition, see s. 65.

For the form of this notice, see No. 10.

28. On the appearance of the debtor to show cause against the petition, the petitioning creditor's debt, and act of insolvency, or such of those matters as the debtor shall have given notice that he intends to dispute, shall be

Further
evidence on
hearing petition.
Adjournment.
E.R. 38.

General Rules
1st Oct., 1874.
rr. 29-32.

proved, and if any new evidence of those matters, or any of them, shall be given, or any witness or witnesses to such matter shall not be present for cross-examination, and further time shall be desired to show cause, the court shall, if it think the application reasonable, grant such further time as it may think fit.

As to the debtor's notice, see last rule; for form of order adjourning a petition, see No. 17.

Creditor not
appearing on the
hearing.
E.R. 39.

29. If any creditor shall neglect to appear on his petition, no subsequent petition against the same debtor or debtors, or any of them, either alone or jointly with any other person or persons, shall be presented by the same creditor without the special leave of the court to which the previous petition was presented.

Hearing of
petition founded
on debtor's
summons.
E.R. 41.

30. [Sect. 44, par. 9.] A debtor shall not be adjudged insolvent on a petition in which the act of insolvency stated to have been committed by him is that the debtor has neglected to pay, secure, or compound with the petitioner a sum mentioned in a debtor's summons, where such debtor shall have applied for the dismissal of such summons until after the hearing of the application, or where the summons has been dismissed, or during a stay of the proceedings thereon.

Hearing of
petition founded
on a declaration
of insolvency.
E.R. 42.

31. [Sect. 44.] Where a petition is presented and the act of insolvency stated to have been committed is that the debtor has filed a declaration admitting his inability to pay his debts, the court may, if the debtor consents in writing thereto, hear and adjudicate upon the petition forthwith.

As to proceedings at the hearing of the petition, see s. 63; for form of adjudication, see No. 18.

Hearing of
petition where
debt contested
and established.
E.R. 43.

32. [Sect. 64.] Where proceedings on a petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt, and such question has been decided in favour of the validity of the debt, the petitioning

creditor may apply to the registrar to fix a day on which further proceedings on the petition may be had, and the registrar, on production of the judgment of the court in which the question was tried, or an office copy thereof, shall give notice to the petitioner by post of the time and place fixed for the hearing of the petition, and a like notice to the debtor at the address given in his notice to dispute.

General Rules
1st Oct., 1874.
rr. 33-35.

33. Where proceedings on a petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt, and such question has been decided against the validity of the debt, the debtor may apply to the registrar to fix a day on which he may apply to the court for the dismissal of the petition with costs, and the registrar, on the production of a copy of the judgment of the court in which the question was tried, or an office copy thereof, shall give notice to both the petitioner and debtor, by post, of the time and place fixed for the hearing of the application.

Dismissal of
petition where
debt contested
and not
established.
E.R. 44.

For form of the dismissal of the petition, see No. 15.

34. [Sect. 64.] Where proceedings on a petition are stayed upon security being given, the creditor shall take or continue proceedings for the payment of the debt within twenty-one days of the date on which the security was completed, and shall prosecute the same with effect and without delay, and if he fail so to do the debtor shall be entitled to have the petition dismissed with costs.

Prosecution of
claim where
proceedings on
petition stayed.
E.R. 47.

35. [Sect. 177, par. 1.] Where two or more petitions are presented to the same court against the same debtor, or against debtors being members of the same partnership, the petition which was first presented shall be first heard; and where such first petition shall not have been served, or where the debtor shows cause against the petition, or where delay will be avoided, any other petition which has been served may be heard, and if the court make adjudication

Procedure in
case of several
petitions against
a debtor or firm.
E.R. 48.

General Rules thereon, the court shall, after the expiration of the time
 1st Oct., 1874. allowed for appeal against the adjudication, dismiss all the
 rr. 36-38. other petitions upon such terms as to costs as it shall deem
 just.

For form of dismissal of petition upon which proceedings are
 stayed when adjudication made on a subsequent petition, see No. 16.

Advertisement
 of adjudication.
 E. R. 45.

36. [Sect. 70.] Notice of the making of an order of
 adjudication shall be advertised according to the form in
 the schedule in one paper circulating in the locality of the
 court, and also in a paper circulating in the locality of the
 debtor's last usual place of business.

Query whether the schedule contains a form of this advertisement.

Case.

This means that the advertisements should be published in one
 paper in Brisbane, and one in the locality of the debtor's last usual
 place of business. That the expenses of preparing and publishing
 such advertisement should be charged against the estate as office
 fees.—*Re "The Insolvency Act,"* December 18th, 1875.

Annuling Adjudication.

Application for. 37. [Sect. 39.] Application to annul an adjudication
 under sect. 39 of the Act must be made within one month
 from the publication in the *Gazette* of the order of adjudi-
 cation, unless the applicant shall satisfy the court that the
 adjudication did not come to his knowledge sufficiently
 early to enable him to apply within that time, in which
 case the court may permit the application to be made
 within such extended time as it shall think fit. Not less
 than four clear days' notice of such application shall be
 given to the trustee and the insolvent.

For form of the application, see No. 48; the order, No. 49;
 notice in *Gazette*, No. 50.

Motions and Practice.

As to notice in writing of all proceedings being given to the
 trustee, see Reg. Gen., August 17th, 1877, r. 4, *post*, which rule
 does not limit rr. 38-45.

Application by
 motion

38. All applications to the court in the exercise of its

primary jurisdiction by virtue of the Act shall (unless General Rules herein or in the Act otherwise provided or the court shall ^{1st Oct., 1874.} in any particular case otherwise permit) be by way of rr. 39-40. motion, supported by affidavit, upon hearing which the court shall make such order therein as shall be just; but ^{supported by affidavit.} ^{E.R. 50.} in cases in which any other party or parties than the applicant are to be affected by such order, no such order shall be made, unless upon the consent of such person or persons duly shown to the court, or upon proof that notice of the intended motion and copy of the affidavit in support thereof has been served upon the party or parties to be affected thereby four clear days at least before the day named in such notice as the day when the motion is to be made. Provided, however, that the court may, if it shall think fit, in any case where the party or parties to be affected by the order, or any of them, shall not have been duly served with a notice of the motion for such order, make an order calling upon the party or parties to be affected thereby to show cause, at a day to be named by the court in such order, why such order should not be made.

As to applications to commit for contempt, see rr. 152, 153; as to every application to a court requiring a 5s. stamp, and every affidavit a 1s. stamp, see table II.

The judge only sits on his regular chamber days, unless a special day appointed, and notice thereof given to the principal registrar, Reg. Gen., Sept 5th, 1876, *post*.

39. Every order to show cause shall, unless the court otherwise order, be served upon the party or parties to be affected thereby, four clear days at the least before the day appointed for showing cause. ^{Service of order to show cause.} ^{E.R. 51.}

40. In cases in which personal service of any notice of motion, or of any rule or order of the court, is required, the same shall be effected, in the case of a notice of motion, by delivering at any time to the party or parties to be served, and each of them, a duplicate of the notice of motion; and in the case of a rule or order, by delivering ^{Personal service.} ^{E.R. 52.}

General Rules to the party or parties to be served, and each of them, a
1st Oct., 1874. sealed copy of the order or rule.

rr. 41-45.

Time for
substituted
service.
E.R. 53.

41. Notices of which substituted service may be made (otherwise than by post or advertisement) shall be served between the hours of nine o'clock in the forenoon and six o'clock in the afternoon.

Affidavits to be
filed; affidavits
in reply.
E.R. 54.

42. Every affidavit to be used in obtaining, supporting, or opposing any motion or order for showing cause for or against any order or rule of court, shall, unless the court otherwise order, be filed with the registrar two days before the day appointed for the hearing; and no affidavit in reply or in rejoinder is to be used except by leave of the court.

Indorsement on
delivery of
affidavits.
E.R. 55.

43. The registrar, upon any affidavit being left with him to be filed, shall indorse the same with the day of the month and year when the same was so left, and forthwith file the same, with the proceedings to which the same relates; and any affidavit left with a registrar to be filed shall on no account be delivered to any person whatever, except by order of the court.

Notice of motion
to be given to
registrar.
E.R. 56.

44. A short note of every motion shall be delivered to the registrar previous to the public sitting of the court, specifying the insolvency or other matter to which the same relates, the name of the party on whose behalf the same is made, the name and residence of the attorney of such party and of the counsel, if the same be made by counsel, and the name of any party, and the name and residence of his attorney, on whom any notice of such motion has been served.

Order of hearing
motions.
E.R. 57.

45. Except in cases of emergency all motions shall be made and heard in the order in which they are set down, at the sitting of the court; but motions by the bar shall be heard in precedence to those by attorneys.

Service of a Debtor's Summons or an Insolvency Petition. General Rules
1st Oct., 1874.

46. A debtor's summons shall be personally served by delivering to the debtor a sealed copy of the summons. rr. 46-51.

As to personal service, see r. 40; as to proof of the service, see Service of
summons
E.R. 59.
r. 50

47. An insolvency petition shall be personally served by delivering to the debtor a sealed copy of the filed petition. Service of
petition.
E.R. 60.

See note to last rule.

48. [Sects. 48 and 56.] If personal service cannot be effected, or if the court is satisfied by affidavit that the debtor is keeping out of the way to avoid such service, it may order service to be made by delivery of the summons or petition to some adult inmate at his usual or last known place of residence or business; or it may order that a notice of the granting of the summons, or filing of the petition, according to the form in the schedule, be gazetted, and that the publication of such notice in the *Gazette* shall be deemed to be service on the debtor on such day after publication as the court shall order. Substituted
service.
E.R. 61.

As to the proceedings at the hearing, see s. 63; for form of notice in *Gazette* of order for substituted service, see No. 8.

49. Notice of the publication in the *Gazette* of the order of the court shall be given, according to the form in the schedule, in one paper circulating in the locality of the debtor's last known place of residence or business. Advertisement
in local paper.
E.R. 62.

For form, see No. 9.

50. Service of the summons or petition shall be proved by affidavit with a sealed copy of the summons or petition attached and filed in court forthwith after the service. Proof of service.
E.R. 63.

51. Where the act of insolvency alleged in a petition to have been committed by the debtor is that the debtor has Service where act
of insolvency is
debtor's absence.
E.R. 65.

General Rules departed from his dwelling-house, or otherwise absented
1st Oct., 1874. himself, the petition may be heard forthwith on a sealed
rr. 52-56. copy of the petition being left at the usual or last known
 place of residence or business of the debtor.

**Service where
 debtor is not in
 the colony.
 E.R. 66.**

52. Where a debtor is not in the colony of Queensland, the court, upon such evidence as shall satisfy it that the service will be effectual or sufficient, may order service to be made within such time and in such manner and form as it shall deem fit.

Proof of Debts.

**Mode of proving
 debts.
 E.R. 67.**

53. [Sects. 132 and 140.] A creditor may prove his debt at any duly summoned meeting of creditors, or at any time before the meeting, by delivering or sending through the post in a prepaid letter, before the appointment of a creditor's trustee to the official trustee, and after the appointment of a creditor's trustee to such trustee, an affidavit according to the form in the schedule.

For form of affidavit for proof of debts, see No. 22; as to the creditor bearing the costs of his proof, see r. 110.

**By whom proof
 of debt is to be
 made.
 E.R. 68.**

54. [Sect. 177, par. 6.] The affidavit may be made by himself or by any agent, or any clerk or other person in his employment; but if the affidavit is made by an agent or clerk it shall state that he is authorised by the creditor to make the affidavit, and that it is within his own knowledge that the debt was incurred for the consideration stated, and that to the best of his knowledge and belief the debt still remains unpaid and unsatisfied.

**Proof by a
 company.
 E.R. 69.**

55. [Sect. 177, par. 7.] A company or other body incorporated or authorised to sue may prove their debt by an agent, according to the form in the schedule.

For the form of the affidavit of proof of debt by the agent of a company, see No. 24; as to a debtor's summons by a company, see r. 12.

Trustee to

56. [Sects. 132 and 140.] The trustee, upon receipt of a

proof of a debt, shall examine the proof and the grounds of the debt, and in writing reject or admit it, in whole or in part, or require further evidence in support thereof; and when he shall admit or reject any claim he shall give notice thereof in writing to the creditor, stating, in case of rejection, the grounds thereof.

General Rules
1st Oct., 1874.
rr. 57-60.

decide on proof.
E.R. 72.

As to the debts which may be proved, see s. 140.

57. [Sect. 142.] If at any time after the admission of any debt by the trustee he shall have reason to believe that such debt has been improperly admitted, he may fix a day to consider the question of expunging the proof or reducing the amount thereof, of which day fourteen days' notice shall be given to the creditor.

Expunging and
reducing proof.
E.R. 78.

58. Any creditor dissatisfied with any decision of the trustee in respect of a proof, may, within fourteen days after the receipt of the notice from the trustee, apply to the court to vary or reverse the decision, and the creditors shall give notice to the trustee thereof seven days before the day fixed for hearing the application.

Appeal from the
decision of
trustee.
E.R. 74.

The time prescribed by this rule may be enlarged by the court.— Case.
Re E. H. Rook, 1 Q.L.J., 47.

59. The trustee in every insolvency shall send to the registrar of the court in which such insolvency is pending a copy certified by him of every resolution of a meeting of creditors, and shall also, on the first day of every month, send to the said registrar a certified list of all proofs, if any, tendered during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration.

Resolutions and
claims to be
sent to the
registrar.
E.R. 75.

60. Any separate creditor of any insolvent shall be at liberty to prove his debt under any adjudication of insolvency made against such insolvent jointly with any other person or persons. And under every such adjudication distinct accounts shall be kept of the joint estate and also

Proof upon joint
and separate
debts.
E.R. 76.

General Rules of the separate estate or estates of each insolvent, and the
1st Oct., 1874. separate estate shall be applied in the first place in satis-
rr. 61-62. faction of the debts of the separate creditors. And in case
there shall be an overplus of the separate estate, such
overplus shall be carried to the account of the joint estate.
And in case there shall be an overplus of the joint estate,
such overplus shall be carried to the account of the separate
estates of each insolvent in proportion to the right and
interest of each insolvent in the joint estate. And the
cost of taking such accounts shall be paid out of the joint
and separate estates respectively as the court shall direct.

As to joint and separate estate, see s. 161 ; as to costs, see r. 96.

Rebate.
E.R. 77.

61. [Sect. 141.] When any proof shall be made in
respect of a debt not accrued due at the date of adjudica-
tion, rebate shall be calculated at the rate of interest fixed
by the parties, if any ; such interest shall be included in
the gross amount of the debt, and, if no such interest shall
be so included, then at the rate of eight per cent.

As to interest on debts, see s. 147 ; if a surplus, see r. 120.

*Taking Accounts of Property Mortgaged or Pledged, and
of the Sale thereof.*

Secured creditor
may apply for an
account and
sale.
E.R. 78.

62. Upon application by motion by any person claiming
to be a mortgagee of, or to have security over any part of
the insolvent's estate or effects, real or personal, and
whether such mortgage or security shall be by deed or
otherwise, and whether the same shall be of a legal or
equitable nature, the court will proceed to inquire whether
such person is such mortgagee, or is entitled to such
security, and for what consideration and under what cir-
cumstances ; and if it shall be found that such person is
such mortgagee, or is entitled to such security, and no
sufficient objection shall appear to the title of such person
to the sum claimed by him under such mortgage or security,
the court will then proceed to take an account of the

principal, interest, and costs due upon such mortgage or security, and of the rents and profits, or dividends, interest, or other proceeds received by such person, or by any other person by his order or for his use, in case he shall have been in possession of the property over which the mortgage or security shall extend, or any part thereof, and the court will then direct notice to be given in such public papers as it shall think fit, when and where, and by whom and in what way the said premises or property, or the interest therein so mortgaged, or over which the security shall so extend, are to be sold, and that such sale be made accordingly, and that the trustee (unless it be otherwise ordered) shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application.

General Rules
1st Oct., 1874.
rr. 63-64.

For the provisions of the Act as to secured creditors, see s. 151; as to account of what is due, see r. 64; as to sales by the trustee, see s. 132.

As to service of notice in writing on the trustee, see Reg. Gen., August 17th, 1877, r. 4, *post*.

63. All proper parties shall join in the conveyance to the purchaser, where necessary, as the court shall direct.

Conveyance.
E.R. 79.

64. The moneys to arise from such sale shall be applied in the first place in payment of the costs, charges, and expenses of the trustee, of and occasioned by the application to the court, and of and attending such sale, and then in payment and in satisfaction so far as the same shall extend of what shall be found due to such mortgagee or person so having security, for principal, interest, and costs, and that the surplus of the said moneys (if any) be paid to the trustee. But in case the moneys to arise from such sale shall be insufficient to pay and satisfy what shall be so found due to such mortgagee or person so having security, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend or dividends then already made.

Application of
the proceeds of
sale and proof
for deficiency.
E.R. 80.

General Rules 65. For the better making such inquiry and taking such
 1st Oct., 1874. account, and making a title to the purchaser, all parties
 rr. 65-68. may be examined by the court upon interrogatories or
 otherwise, as it shall think fit, and shall produce before the
 court upon oath, all deeds, papers, and writings in their
 respective custody or power, relating to the estate or
 effects of the insolvent, as the court shall direct.

Taking inquiries
 and accounts as
 to securities.
 E.R. 81.

Transfer of Proceedings.

Application for
 and notice of. 66. [Sect. 18.] Seven days' notice shall be given of ap-
 plications to transfer proceedings from the Supreme Court
 to a district court. If the application is made by a
 creditor, notice shall be given to the trustee and the in-
 solvent; if by the trustee, such notice shall be given by
 advertisement in a local paper; if by the insolvent, such
 notice shall be given to the trustee.

How transfer
 made.
 E.R. 84.

67. Where all or any part of the proceedings in any in-
 solvency are transferred from the Supreme Court to any
 district court, or from any district court to any other
 district court, the registrar of the first court shall send by
 book-post the proceedings to the registrar of the court to
 which the proceedings are transferred; and the receipt of
 such proceedings shall be considered to authorise the latter
 court to continue such proceedings, without any further
 order for transferring them than is contained in the pro-
 ceedings.

For form of transfer of proceedings, see No. 32.

Transfer under
 judge's
 certificate.
 E.R. 82.

68. [Sect. 177, par. 4.] Where the judge of a district
 court certifies that in his opinion the whole or any part of
 the proceedings would be more advantageously conducted
 in some other district court, the registrar shall transmit a
 copy of such certified opinion to the trustee, who shall
 thereupon summon a meeting of creditors to consider the
 same.

For form of judge's certificate for transfer, see No. 33.

69. If within thirty days after transmitting such notice to the trustee no resolution of the creditors objecting to such transfer shall be received by the court through the registrar, the transfer may be made accordingly.

General Rules
1st Oct., 1874.
rr. 69-73.

When transfer
made.
E.R. 83.

Proxy.

70. [Sects. 93 and 177, par. 9.] The instrument appointing a proxy shall be in writing under the hand of the creditor, or if such creditor is a corporation or company, under the hand of an agent stating that he is duly authorised on its behalf; and such instrument shall be according to the form in the schedule, and shall, unless it is expressly stated otherwise therein, be deemed and allowed as an authority to the appointee of the creditor to vote for him and on his behalf at all meetings of creditors in the estate, or adjournments thereof, and generally to act for the creditor in all other matters in the estate, of whatsoever kind, as fully as the creditor himself could act.

Form of.
E.R. 85.

For form of proxy, see No. 23.

71. The instrument must be produced at the first meeting at which the proxy attends and be filed.

Filing of proxy.
E.R. 86.

Service of Order of Adjudication.

72. [Sect. 122.] A sealed copy of the order of adjudication shall be served on the insolvent personally, or by leaving the same with some adult inmate at his usual or last known place of residence or business.

How effected.
E.R. 90.

As to personal service, see r. 40.

Statement of Affairs.

73. [Sects. 69, 122.] The statement referred to in section 69, and the inventory of the insolvent's property, and lists of his creditors and debtors, and of the debts due to and from them, shall be verified, on oath, in the form in the schedule.

Verification of.

For form of statement and affidavit, see No. 28.

General Rules 74. [Sect. 122.] In cases of partnership the insolvents
 1st Oct., 1874. shall give a statement of their partnership affairs, and each
 rr. 74-77. insolvent shall give a statement of his separate affairs.

Statement by
 partners.
 E.R. 91.

Meetings of Creditors.

Application as
 to place for first
 meeting.
 E.R. 87.

75. [Sect. 187.] If the petitioning creditor, or any other creditor, desire that the first meeting of creditors should be held at any other place than the principal registry, application, supported by affidavit showing grounds for the application, must be made at the hearing of the petition. If such application be by any other person than the petitioning creditor, two days' notice thereof must be given to the petitioning creditor, and if the court be reasonably satisfied that the circumstances of the estate and of the creditors require that the application should be granted, the same shall be granted accordingly.

Deposit on
 application.
 E.R. 88.

76. With every such application for a meeting to be held elsewhere than in the principal registry there shall be deposited in the office of the registrar the sum of three pounds to defray the reasonable expenses of the registrar in attending such meeting, to be afterwards allowed to the applicant out of the estate by the trustee.

As to the expenses of the registrar, see s. 187.

Advertisement
 of adjudication
 and first
 meeting.
 E.R. 89.

77. [Sect. 89.] Notice of the adjudication and first meeting of creditors shall be given immediately after making an order of adjudication, by the registrar, by advertisement in one local paper, according to the form in the schedule.

For form of notice and first meeting in local paper, see No. 19.

Case

This means that the advertisement should be published in a paper in Brisbane, and one in the locality of the debtor's last usual place of business, and that the expenses of preparing and publishing such advertisements should be charged against the estate as office fees. —*Re "The Insolvency Act,"* December 18, 1875. See further note at the end of table II.

78. [Sect. 93.] A meeting of creditors shall not be competent to act for any purpose under the Act (except the election of a chairman, the proving of debts, and the adjournment of the meeting), unless there are present or represented thereat a quorum of at least three, or all the creditors if their number does not exceed three.

General Rules
1st Oct., 1874.
rr. 78-82.

Quorum at
meetings.
E.R. 93.

79. [Sect. 93.] Where within half an hour from the time appointed for the first meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week, at the same time and place, or to such other day as the registrar or chairman may appoint, not being less than seven or more than twenty-one days; and if the meeting adjourned is the first meeting of creditors, or a meeting called to fill up a vacancy in the office of trustee, and a quorum is not present or represented at the adjourned meeting, the registrar shall report the fact to the court.

Adjournment in
default of
quorum.
E.R. 94.

80. [Sect. 128.] Where a meeting of creditors is summoned by a trustee it shall be summoned by the trustee transmitting to each creditor, or to his attorney, at the address given in his proof, or when he shall not have proved, the address given in the list of creditors by the insolvent, or such other address as may be known to the trustee, seven days before the meeting is to be held, a notice setting forth the time and place at which it is to be held, and the purpose for which it is summoned.

Summons for
meeting by
trustee.
E.R. 95.

As to notice of meetings, see r. 7; and evidence of sending notices, see r. 83.

81. [Sect. 164.] Fourteen days' notice of the time and place appointed for the last examination of an insolvent shall be given to the insolvent, and by advertisement in the *Gazette* and a local paper.

Notice of last
examination.
E.R. 111.

For form of notice, see No. 34.

82. Wherever a meeting of creditors is called by notice, the proceedings had and resolutions come to at such

Notice of
meeting not
received.
E.R. 97.

General Rules meeting shall be valid, notwithstanding that some creditors
1st Oct., 1874. shall not have received the notice sent to them, unless
rr. 83-88. otherwise ordered by the court.

Evidence of
sending notices.
E.R. 98.

83. An affidavit by a trustee, or an officer of the court, or by any clerk of either, that letters have been put into a post office shall be sufficient evidence of such notices having been duly sent to the persons to whom the same purport to have been addressed.

Secured creditor
to assess his
security.
E.R. 99.

84. A secured creditor, unless he shall have realised his security, shall, previously to being allowed to prove or vote, state in his proof the particulars of his security and the value at which he assesses the same, and he shall be deemed to be a creditor only in respect of the balance due to him after deducting such assessed value of the security.

For definition of a secured creditor, see s. 4; as to his giving credit for his security, see r. 119.

Security
assessed below
its value.
E.R. 100.

85. Any secured creditor so proving shall be bound to pay over to the trustee the amount which his security shall produce beyond the amount of such assessed value, and the trustee shall be entitled, at any time before realisation of such security by the creditor, to redeem the same upon payment of such assessed value.

Security
assessed above
value.
E.R. 101.

86. The proof of any such creditor shall not be increased in the event of the security realising a less sum than the value at which he has so assessed the same.

Costs of
summoning
meetings.
E.R. 102.

87. The cost of summoning a meeting of creditors by any person other than the trustee shall be paid by the person at whose instance it is summoned, to be repaid to him out of the estate if the trustee, or the committee of inspection, or the court, shall so direct.

Trustee.

Receiver to
submit his
accounts to.
E.R. 104.

88. Every receiver or manager of the property or business of the insolvent shall submit his accounts for

examination to the trustee, and for that purpose attend on the trustee, at such reasonable times as he may require.

General Rules
1st Oct., 1874.
rr. 89-93.

89. Immediately upon the appointment of a creditors' trustee being reported, the court shall give to the trustee a certificate declaring him to be the trustee, provided he has given such security, if any, as may have been required by the creditors.

Certificate of
trustee's
appointment.
E.R. 105.

For form of this certificate, see No. 30; of the trustee's bond, 29.

As to service of an office copy of this certificate on the official trustee immediately, see Reg. Gen., 17th Aug., 1877, r. 3, *post*.

90. [Sect. 92.] Omission to pass a resolution under subsection 2 or 3 of section 92 of the Act shall not invalidate the appointment of a trustee, and where no security has been specified to be given by the trustee, he shall be deemed to be personally responsible, in the performance of the duties of his office, to the extent of the value of the property of the insolvent.

Liability of
trustee where
no security
required.
E.R. 106.

91. [Sect. 92.] Where at ^{first} the meeting or any adjournment thereof the creditors shall resolve that one or more named persons shall be accepted as the sureties of the trustee, it shall not be necessary for the said person to justify their sufficiency.

Justification by
sureties.
E.R. 107.

92. Where no remuneration has been voted to a trustee, he shall be allowed out of the insolvent's estate such proper costs and expenses as may be incurred by him in or about the proceedings of the insolvency as the registrar shall allow.

Remuneration
of trustee.
E.R. 108.

As to the creditors fixing the trustee's remuneration, see s. 92 (1).

93. [Sect. 136.] Where the creditors shall have failed to appoint the bank into which the trustee is to pay all moneys received by him, he shall pay them into such bank as the committee of inspection, or, where there is no committee, the court shall appoint.

Bank.
E.R. 109.

General Rules As to the mode of keeping the accounts by the official trustee, see 1st Oct., 1874. Reg. Gen., 17th Aug., 1877, r. 7 : Reg. Gen., 12th Dec., 1879, *post*.

rr. 94-98.

Notice of
trustee's
appointment.
E.R. 111.

94. Notice of the appointment of the trustee shall be gazetted forthwith, and be inserted in one local paper by the trustee, and he shall send a copy of the notice to each creditor.

For the form of this notice, see No. 31.

Application by
the trustee for
directions.
E.R. 112.

95. [Sect. 127.] Where a trustee desires to apply to the court for directions in relation to any particular matter arising under the insolvency, he shall file his application, according to the form in the schedule, and the court shall then hear the application, or fix a day for its hearing, and direct the trustee to apply by motion.

For the form of this application, see No. 44 ; the order thereon, No. 45 ; as to the trustee's costs, see r. 99.

Costs which
joint or separate
estate is
insufficient to
bear.
E.R. 113.

96. In case any joint estate of any insolvents shall be insufficient to pay any costs or charges necessarily incurred in respect of the same, the court, on application of the trustee, may order such costs to be paid out of the separate estates of such insolvents, or one or any of them ; and, *vice versa*, may order costs necessarily incurred for any separate estate, if the same were incurred with reasonable probability of benefit to the joint estate, to be paid out of such joint estate.

As to costs, see r. 60.

Costs of
trustee's
attorney.
E.R. 114.

97. [Sect. 133, par. 3, and 135.] A trustee shall not be allowed in his accounts any sum paid by him to his attorney for his bill of costs, unless the same shall have been duly taxed as between attorney and client.

As to the allocatur requiring a 5s. stamp, see table II.

Change of
attorney where
official trustee
becomes trustee.
E.R. 115.

98. Where, in consequence of an insolvency being closed, or of a vacancy in the office of trustee, an official trustee becomes trustee, the attorney (if any) who has theretofore acted in the matter of the bankruptcy shall not be changed

unless the court shall by order, setting forth the reasons for the change, otherwise direct.

General Rules
1st Oct., 1874.

rr. 99-103.

99. The taxing officer shall not allow to a trustee any charges for attorney or counsel in attending the court to make any application unless the sanction in writing of the committee of inspection to their being or having been employed is produced to him, or unless the same has been allowed by the court as necessary.

Costs of
application by
the trustee to
the court.
E.R. 116.

100. [Sect. 47.] Where an order of adjudication has been made upon the petition of a secured creditor, who has been admitted as the petitioning creditor to the extent of the balance of the debt due to him after deducting the amount estimated by the creditor, as the value of his security, he shall, upon the application of the trustee, made within two months after the date of the order of adjudication, give up the security to the trustee upon the payment to him of the value so estimated, and where the trustee does not so apply within such term he shall be considered to have waived his right to redeem the security by payment of such estimated value.

Security held by
the petitioning
creditor.
E.R. 117.

101. The trustee shall within seven days of his allowing or disallowing a proof, file such proof with the registrar, with a memorandum thereon of his allowance or disallowance thereof.

Proof to be filed.
E.R. 118.

102. [Sect. 132, par. 4.] Where the trustee is an auctioneer he shall not by himself or any partner act as such in the sale of any of the property vested in him, except with the consent of the committee of inspection, and upon such terms as it may think fit.

Sales where
trustee an
auctioneer.
E.R. 119.

103. [Sect. 101, pp. 5 and 13.] Where a creditor desires a meeting of creditors to be held to remove a trustee or a member of the committee of inspection, he shall apply to some member of the committee of inspection to specially summon a meeting for that purpose, and for the purpose of appointing another person to fill the office, by sending a

Removal of
trustee or
inspector.
E.R. 120.

General Rules notice to each creditor seven days before the meeting is to
1st Oct., 1874. be held; and where such member refuses to summon a
rr. 104-106. a meeting, or there is no committee of inspection, the
 creditor may apply to the court upon an affidavit stating
 specifically the facts which would appear to justify the
 removal of such trustee or a member of the committee of
 inspection, and the court may direct the registrar to sum-
 mon a meeting accordingly, or, if it think fit, may direct
 notice to be given to the trustee to show cause why the
 court should not remove him.

As to notice in writing to the trustee, see Reg. Gen., 17th August, 1887, r. 4, *post*.

**Remuneration
of trustee on
resignation, &c.
E.R. 121.**

104. Where a creditors' trustee resigns, dies, or is removed, prior to obtaining his release, the creditors shall determine what, if any, remuneration shall be paid for the services which he may have rendered.

As to the suspension or removal of a trustee, see s. 101 (4); his delivering up papers, r. 184; his remuneration, r. 92.

For form of notice of meeting to be held on the resignation of a trustee, see No. 37; of minutes at that meeting, No. 38.

**Release of
trustee.
E.R. 122.**

105. [Sect. 197.] A trustee desirous of obtaining his release shall apply to the court to fix the time and place upon which he may make application to the court for such release, and upon such time being fixed he shall summon a meeting of the creditors to consider such application, stating therein the time and place on which the application to the court will be made.

For form of application for release by trustee and order thereon, see No. 51.

**Accountant's
report on
trustee's
account.
E.R. 123.**

106. A trustee applying for a release shall produce to the meeting of creditors a report from the accountant upon his accounts.

As to the mode of obtaining the accountant's report, see r. 183. See Reg. Gen., 17th August, 1877, r. 8, *post*.

107. The release of a creditors' trustee shall operate as a removal of a trustee, and thereupon the official trustee shall be the trustee.

General Rules
1st Oct., 1874.
rr. 107-111.

108. [Sects. 198 and 101.] Upon the close of an insolvency in which there is a creditors' trustee, the trustee shall deliver a list of the outstanding property to the official trustee originally appointed in the estate, who shall thereupon be deemed to be the trustee, and shall realise the property if practicable, and declare a dividend from the proceeds thereof in the same manner as if he had been the trustee by reason of there being no trustee acting during the continuance of the insolvency, as provided by section 101 of the Act.

Effect of release.
E.R. 124.
Outstanding
property at close
of insolvency.
E.R. 125.

109. Where a trustee shall resign, or be removed from his office, he shall, within four days thereafter, render to the registrar, to be filed with the proceedings, an account in writing showing what he has done while trustee, and shall duly account for all moneys or property of the insolvency. If he do not comply with these requisitions within the prescribed time the court shall enforce obedience thereto.

Trustee to
render account
to registrar.
E.R. 126.

See note to r. 104.

110. A creditor shall bear the cost of making proof of his debt, unless the court shall otherwise specially order, and no part of the expense of any competition for the office of trustee shall be paid out of the estate.

Cost of proof and
competition for
trusteeship.
E.R. 127.

See further as to trustees, rr. 177-186.

Official Trustee.

111. [Sect. 101.] Where the official trustee is trustee of the property of an insolvent by reason of there being no trustee acting during the insolvency, he shall not be required to give security, but his accounts shall, if there be no committee of inspection, be audited by the accountant.

Accounts by the
official trustee.
E.R. 128.

General Rules

Committee of Inspection.

1st Oct., 1874.

rr. 112-118.

Quorum of
committee of
inspection.
E.R. 129.

112. Where the creditors neglect by resolution to fix the quorum required to be present at a meeting of the committee of inspection, the quorum shall be two; or if the number of the committee be less than three, the quorum shall be the whole number.

Resolutions by
inspectors.
E.R. 130.

113. A resolution of the committee of inspection shall be passed unanimously, or by a majority in numbers of the members present at the meeting.

Dividends.

Notice of
dividend before
declaration.
E.R. 131.

114. [Sect. 152.] Where a dividend is intended to be declared, the trustee shall give reasonable notice thereof to such of the creditors, mentioned in the insolvent's statement, as shall not have proved their debts, and the notice shall also be gazetted.

For form of this notice, see No. 40.

Notice of
dividend after
declaration.
E.R. 132.

115. Notice of a dividend having been declared shall be gazetted and advertised in one local paper by the trustee according to the form in the schedule, and he shall also send a notice to each creditor who has proved, showing the amount of the dividend, and when and where it is payable.

Transmission of
dividends by
post.
E.R. 133.

116. The amount of the dividend may, at the risk of the creditor, be transmitted to a creditor by registered post letter, enclosing a cheque or post-office order, less the cost of remittance, upon his returning the notice to the trustee with the receipt attached to it duly signed, or it shall be paid upon the production of the notice and the receipt to the trustee at the time mentioned in the notice.

Production of
negotiable
securities.
E.R. 134.

117. All bills of exchange or other negotiable securities upon which proof has been made must be exhibited to the trustee before payment of dividend.

Application for
dividends where
not paid.
E.R. 135.

118. [Sect. 158.] A creditor may apply for the payment of a dividend withheld by a trustee by sending or giving to

the registrar and the trustee a notice according to the form in the schedule, and the court may, if it shall see fit, make an order upon such application for the payment of the dividend without requiring the attendance of the creditor thereat.

General Rules
1st Oct., 1874.
rr. 119-120.

For the form of this application, see No. 41.

119. [Sect. 151.] A creditor who is desirous of giving credit for the value of his security in order to entitle him to a dividend in respect of the balance of his debt after deducting the assessed value, shall give notice thereof to the trustee, and the value of his security shall be determined in the same manner as the value of the security is to be determined, as prescribed with reference to the balance upon which a secured creditor may vote, and such creditor shall give credit for the value within thirty days after he shall be called upon by the trustee so to do, unless he shall be out of the colony of Queensland, and then within such reasonable time as the trustee may fix, having regard to the means of communication between the said colony and the place where the creditor may be, and in default thereof shall be deemed to be fully secured. If the trustee or any other creditor shall be dissatisfied with the value put on the security, the trustee may require the security to be realised.

Dividends to
secured
creditors.
E.R. 136.

As to valuing security for voting, see rr. 84-86.

120. [Sect. 157.] Where the produce of the estate of an insolvent is sufficient to pay twenty shillings in the pound and interest as hereinafter mentioned, and to leave a surplus, such surplus shall be paid by the trustee to such insolvent, his executors, administrators, or assigns; and every such insolvent shall be entitled to recover the remainder, if any, of the debts due to him; but such surplus shall not be paid until all the creditors who have proved shall have received interest upon their debts, to be calculated and paid at the rate and in the order following, viz.:

Surplus of estate
to belong to
insolvent.
E.R. 137.

General Rules All creditors whose debts are by law entitled to carry
1st Oct., 1874. interest, in the event of a surplus, shall first receive interest
rr. 121-123. on such debts at the rate of interest reserved, or by law payable or provable thereon, to be calculated from the date of the order of adjudication; and after such interest shall have been paid, all other creditors who have proved shall receive interest on their debts from such date, at the rate of eight pounds per centum per annum.

As to the insolvent's title to the surplus, see s. 157.

Certificate of Discharge.

**Application for
certificate.**
E.R. 138.

121. [Sect. 167.] An insolvent intending to apply for a certificate of discharge shall file an application with the registrar, who shall thereupon fix the time and place at which the application will be heard. Notice of the time and place fixed for the hearing of the application for the certificate of discharge shall be gazetted, and also given to the trustee by the insolvent, twenty-one days before such day.

As to every application for a certificate requiring a £1 stamp, see table II.

For form of this application, see No. 53; notice of, No. 52; memorandum, No. 54.

**Date of
certificate**
E.R. 139.

122. Every certificate shall take effect on and from the day of its date, and shall be gazetted by the insolvent.

For form of the notice in the *Gazette*, see No. 57.

**Meeting to
consider
application for
certificate.**
E.R. 142.

123. An insolvent desirous of obtaining the assent of his creditors to his applying to the court for a certificate of discharge during the continuance of his insolvency shall request the trustee to summon a meeting of his creditors, and thereupon the trustee, upon the deposit of twenty shillings for costs, shall summon such meeting: where at the meeting the creditors do not so assent, no other meeting shall be called for the same purpose until after the lapse of three calendar months.

Appeal.

General Rules

1st Oct., 1874.

rr. 124-129.

124. [Sect. 16.] An appeal shall be entered with the registrar of the Supreme Court, by leaving with him a copy of the appeal notice of motion.

Entry of appeal.
E.R. 148.

As to time limited for appeals, see s. 16.

125. In case of an appeal from district courts, upon entering the appeal a copy of the appeal notice shall be sent forthwith by the appellant to the registrar of the court appealed from, who shall forthwith file the same with the proceedings, and a similar notice shall be delivered by the appellant to each respondent four days before the day on which he intends to move.

Notice of appeal
E.R. 144.

126. At or before the time of entering an appeal the party intending to appeal shall deposit with the registrar such sum, not being less than ten pounds and not exceeding forty pounds, as the court appealed from shall direct, to satisfy, so far as the same may extend, any costs that the appellant may be ordered to pay, and in the absence of any such direction the sum deposited shall be twenty pounds.

Deposit on
appeal.
E.R. 145.

127. Where there are several respondents in separate interests, the court may, if it shall think fit, direct a separate deposit to be made as to every such respondent.

Deposit where
several
respondents.
E.R. 146.

128. All appeals shall be brought on by motion, and no new evidence shall be received on any appeal, unless the court of appeal shall so direct; but any of the parties shall be at liberty to bring before the court of appeal, by affidavit, the circumstances under which the decision or order appealed from was made.

Appeals to be
by motion.
Evidence
thereon.
E.R. 147.

As to rehearing, see ss. 14-16.

129. Every affidavit intended to be used upon the hearing of any appeal shall be filed with the registrar, and a

Affidavits to be
filed and copies
sent.
E.R. 148.

General Rules copy thereof sent by the appellant to the respondent four
1st Oct., 1874. clear days before the day appointed for hearing.
rr. 130-132.

See further as to affidavits, r. 128.

Transmission
of file.
E.R. 149.

130. In case of an appeal from a district court, the registrar of the court appealed from shall, upon the application of the registrar of the Supreme Court, transmit to him the file of proceedings in the matter under appeal.

Affidavits.

Common law
rules as to
affidavits to
apply.

131. The common law rules respecting affidavits shall, as far as practicable, apply in insolvency.

See O. XXXVI, as to evidence by affidavit, and O. LIX, r. 2 as applying it to proceedings in insolvency.

Swearing
affidavits.
E.R. 157.

132. Any affidavits used in any matter of insolvency may be sworn as follows:—

- (1.) In the colony of Queensland, before a court having jurisdiction in insolvency, or a judge thereof, or an officer thereof authorised to administer oaths in that court, or before a commissioner for affidavits or justice of the peace, and in case of proof of debts, before the trustee or a registrar.
- (2.) In any place in the British dominions out of the colony of Queensland, before any court, judge, or justice of the peace, or any person authorised to administer oaths there in any court.
- (3.) In any place out of the British dominions, before a British minister, consul, vice-consul, or notary public, or before a judge or magistrate, his signature being authenticated by the official seal of the court to which such judge or magistrate is attached.

Security.

General Rules

133. Where a person is required to give security, such security shall be in the form of a bond with one or more surety or sureties to the person proposed to be so secured.

For the form of a bond on stay of proceedings, see No. 12; trustee's bond, No. 29. As to every bond with sureties requiring a 5s. stamp, see table II.

1st Oct., 1874.

rr. 133-137.

Security to be by bond.
E.R. 158.

134. The bond of any person other than a trustee shall be taken in a penal sum, to the amount of double the sum in question up to the sum of £1,000; and where the sum in question exceeds £1,000 in the sum of £1,000 beyond such sum, unless in either case the opposite party consents to it being taken for a less sum.

Penalty of bond.
E.R. 159.

135. Where a person is required to give security, he may in lieu thereof deposit with the registrar a sum equal to the sum in question in respect of which security is to be given, and the probable costs of the trial of the question, together with a memorandum to be approved of by the registrar and to be signed by such person, his attorney or agent, setting forth the conditions on which the money is deposited.

Deposit in lieu of security.
E.R. 160.

As to practice where deposit is made, see r. 140.

136. The security of a guarantee association or society may be given in lieu of a bond or a deposit.

Security by guarantee society.
E.R. 161.

137. In all cases where a person proposes to give a bond by way of security, he shall serve, by post or otherwise, on the opposite party and on the registrar, at his office, notice of the proposed sureties according to the form set forth in the schedule, and the registrar shall forthwith give notice to both parties of the time and place at which he proposes that the bond shall be executed, and shall state in the notice, that should the proposed obligee have any valid objection to make to the sureties, or either of them, it must then be made.

Notice of sureties and objection to them.
E.R. 162.

For form of notice of sureties, see No. 13.

General Rules 138. The sureties shall make an affidavit of their
1st Oct., 1874. sufficiency according to the form in the schedule, unless
rr. 138-142. the opposite party shall dispense with such affidavit, and
 such sureties shall attend the court to be cross-examined,
 if required.

Affidavit of
sufficiency by
sureties.
E.R. 163.

As to when justification is unnecessary, see r. 91; for the form of the affidavit of justification, see No. 14.

Execution of
bond.
E.R. 164.

139. The bond shall be executed and attested in the presence of the registrar, or before a justice of the peace, or an attorney.

Notice in case of
deposit.
E.R. 165.

140. Where a person makes a deposit of money in lieu of giving a bond, the registrar shall forthwith give notice to the person to whom the security is to be given of such deposit having been made.

Witnesses.

Subpœna.
E.R. 166.

141. [Sects. 114 and 73.] A subpœna for the attendance of a witness capable of giving evidence concerning any matter in the court, before or after adjudication, shall be issued by the registrar at the instance of a trustee, a creditor, a debtor, or any respondent in any matter, with or without a clause requiring the production of books, deeds, papers, and writings in his possession or control, and in such subpœna the names of not more than three witnesses shall be inserted. A subpœna may be issued in blank as at common law.

As to every subpœna requiring a 1s. stamp, see table II; for its form, see No. 62; for the form of a summons under s. 114, see No. 63.

Service of
subpœna.
E.R. 167.

142. A sealed copy of the subpœna shall be served personally on the witness, within a reasonable time before the time of the return thereof. A reasonable sum for expenses shall be paid or tendered to the witness at the time of service.

143. Service of the subpoena shall, where required, be proved by affidavit.

General Rules
1st Oct., 1874.
rr. 143-147.

144. The court may in any matter limit the number of witnesses to be allowed on taxation of costs, and their allowance for attendance shall in no case exceed the highest rate of the allowances mentioned in the scale in the schedule.

Evidence of
service.
E.R. 168.
Costs of
witnesses.
E.R. 169.

145. The costs of witnesses, whether they have been examined or not, may, in the discretion of the court, be allowed.

Costs of
witnesses not
examined.
E.R. 170.

Discovery of Insolvent's Property.

146. [Sect. 114.] Every application to the court under section 114 of "*The Insolvency Act of 1874*" shall be in writing, and shall state shortly the grounds upon which the application is made, and where the application is not made on behalf of the trustee, the grounds upon which the application is made shall be verified by affidavit.

Application for
discovery of
property.
E.R. 171.

For the form of summons, see No. 63.

Application for Discharge during Three Years after close of Insolvency.

147. [Sect. 176.] Where an insolvent who has not obtained his certificate of discharge shall, after the close of the insolvency, pay or tender to the several creditors who have proved their debts, a sum which with the dividends paid shall make up not less than twenty shillings in the pound, and shall desire to obtain a certificate of discharge, he shall file with the registrar a statement, verified by affidavit, of the sums so paid or tendered, and when and where paid, with the receipts of the creditors or their representatives for the sums respectively paid to them written on or attached thereto.

Statement to be
filed before
application for
certificate.
E.R. 172.

As to the close of the insolvency, see s. 166.

General Rules
1st Oct., 1874.
rr. 148-152.

Time for
application, for
certificate, and
of notice to be
given. E.R. 173.

148. The registrar shall appoint a day for the hearing of the application for the order of discharge, and a notice thereof shall be gazetted twenty-one days before the day appointed, and a copy thereof shall be sent by the insolvent to each creditor who has proved or claimed a debt under the insolvency.

For form of notice, see No. 52. As to the application for certificate requiring a £1 stamp, see table II.

Creditor or
representative
not to be found
E.R. 174.

149. Where a creditor cannot be found or is dead, and no representative is known, the insolvent may deposit the money payable to such creditor with the registrar.

Arrests, Commitments.

Address of
warrant.
E.R. 176.

150. [Sect. 118.] A warrant of seizure or a search warrant, or any other warrant issued under the provisions of the Act, shall be addressed to such person as the court may in each case direct.

For form of search warrant, see No. 59; warrant of seizure, No. 60.

Arrest of
insolvent;
seizure of his
property
E.R. 177.

151. [Sects. 71 and 72.] Where a debtor or an insolvent is arrested under a warrant issued under sections 71 or 72 of the Act, he shall be safely kept by being lodged within the prison, to the keeper of which the warrant is, amongst others, addressed; and in the case of a warrant under section 72 any books, papers, moneys, goods and chattels in the possession of the insolvent, which may be seized, shall be lodged with the trustee forthwith.

For form of warrant against debtor about to quit the colony, see No. 61.

Application to
commit for
contempt.
E.R. 178.

152. An application to the court to commit any person for contempt of court shall be supported by affidavit, and be filed in the court in which the proceedings are.

For forms of affidavits, see Nos. 68, 71-73; of application by the trustee, see No. 70.

153. Upon the filing of such application the registrar shall fix a time and place for the court to hear the application, and shall issue a notice to be served personally on the person sought to be committed three days at least before the day of hearing the application, unless the court shall, by order upon good cause shown, direct service of the notice to be made in some other manner, in which case it shall be served together with a copy of the order, in the manner so directed.

General Rules
1st Oct., 1874.
rr. 153-156.

Hearing of
application to
commit for
contempt, and
notice to be
given.
E.R. 179.

For form of notices of application for committal, see Nos. 74-76.

Setting aside Pay, &c.

154. [Sect. 103.] Where an order of court is made under section 103 of the Act, the registrar shall give to the trustee a sealed copy of the order, who shall submit the same to the chief of the department under which the salary, emolument, pension, or compensation is enjoyed, for the purpose of his consent to the order being written thereon.

Order to set
aside pay to be
sent to the
department.
E.R. 180.

Compare with a. 103 ; for form of order, see No. 64.

155. [Sect. 104.] Where a trustee intends to apply to the court for an order for payment by an insolvent of a portion of his salary or income under section 104 of the Act, he shall give notice to the insolvent of his intention, of the time and place fixed for the hearing of his application, and that the insolvent is at liberty to attend and show cause against an order being made on the application.

Application as
to insolvent's
salary.
E.R. 181

For form of notice see No. 65 ; of order, No. 66.

156. [Sect. 104.] Where an order has been made for the payment by an insolvent, or by his employer for the time being, of a portion of his income or salary, the insolvent may, upon his ceasing to receive a salary or income or the amount he received when the order was made, apply to the court to rescind the order, or to reduce the amount ordered to be paid by him to the trustee.

Variation of
order as to
insolvent's
salary.
E.R. 182.

See variation

General Rules *Enforcement of Debt against Undischarged Insolvent.*

1st Oct., 1874.

rr. 157-160.

Application to
enforce debt
against
uncertificated
insolvent.
E.R. 188.

157. [Sect. 176, par. 2.] Where after the expiration of a period of three years from the close of an insolvency, in which the insolvent has not obtained a certificate of discharge, an application is made to the court for its sanction to the enforcement by a creditor of the payment of the balance remaining unpaid of a debt proved under the insolvency, the creditor shall file a statement, verified by affidavit, showing the dividend paid under the insolvency, the balance remaining unpaid, and the property against which he seeks to enforce payment, and that such property is the property of the insolvent, and the registrar shall thereupon appoint a time and place for the hearing of the application, and direct notice of the time and place appointed for the hearing, according to the form in the schedule, to be served personally on the insolvent or at his usual or last known place of residence or business.

For form of notice, see No. 58.

Hearing of
application to
enforce debt.
E.R. 184.

158. At the hearing of the application, service of the notice on the insolvent shall be proved unless he appears, and the court if it think fit may refuse the application, or adjourn the hearing to some other day, and in such latter case shall direct the creditor to cause a notice to be gazetted and inserted in one local paper, seven days before the day to which the hearing is adjourned, according to the form in the schedule.

Adjourned
hearing of
application to
enforce debt.
E.R. 185.

159. At the adjourned hearing the creditor shall produce a copy of the *Gazette* and of the paper in which the notice was published, and the court may then hear all persons claiming to be creditors of the debtor before or since the close of the insolvency, and make such order in the matter as it thinks fit, or adjourn the hearing for further evidence.

Costs.

Order for
payment to be
sealed.
E.R. 187.

160. Every order for payment of money and costs, or either of them, shall be sealed with the seal of the court,

and be signed by a registrar, and shall be forthwith filed with the proceedings.

General Rules
1st Oct., 1874.
rr. 161-165.

161. The costs directed by any such order to be paid shall be taxed by the registrar on production of an office copy of such order, and the allocatur shall be signed and dated by the registrar taxing the costs.

Taxation of
costs.
E.R. 189.

As to every allocatur requiring a 5s. stamp, see table II.

Trial by Jury.

162. [Sect. 23.] Where, upon any application to the court for its decision on any question, the court, either on its own motion or on the application of any person, shall have directed that a question of fact be tried by a jury, such question of fact shall be reduced into writing and submitted to the judge for his approval, and shall, when approved, be signed by the registrar and filed, and shall be called the record for trial; but the court shall have power to allow any amendment thereof at any time upon such terms as it may think fit.

Record for trial
by jury.
E.R. 190.

As to every record for trial requiring a £1 stamp, see table II.

163. The common law rules respecting trials by jury shall as far as practicable apply in insolvency.

Common law
rules to apply.

As to the application of the "Rules of the Supreme Court," see O. LIX, r. 1a.

164. The verdict or finding of the jury, as the case may be, shall be endorsed by the registrar on the record for trial, and, with the jury panel and the names of the jurors who were sworn, endorsed thereon.

Endorsement
of record.
E.R. 203.

Sittings of a District Court.

165. Any times appointed for the sitting of a district court in matters of insolvency other than those appointed for the transaction of the general business of the court, shall be notified by advertisement in such manner as the judge in each case shall direct.

Time of sitting
of district court.
E.R. 205.

As to ordinary sittings, see s. 13.

General Rules

1st Oct., 1874.

rr. 166-170.

Depositions to
be in writing
and signed.Remuneration
of shorthand
writer.*Examination of Insolvent or Witness.*

166. [Sect. 182.] All evidence and depositions taken before any examining court shall be reduced into writing, and signed by the deponent.

167. [Sect. 183.] Every shorthand writer appointed under sect. 183 of the Act shall be paid a sum not exceeding two guineas per day, and a sum not exceeding one shilling per folio of ninety words, of any transcript of the evidence that may be required.

*Writs of Execution.*Form of writs of
execution.
Fees thereon.
E. R. 229.

168. Writs of execution shall be according to the forms in the schedule, or as near thereto as the circumstances of the case may require, and such writs, when sealed, shall be delivered to the sheriff or other officer to whom the execution of the like writs issuing out of the same court in its common law jurisdiction belongs, and shall be executed by such sheriff or other officer as nearly as may be in the same manner in which he doth or ought to execute such like writs; and for the execution of such writs such sheriff or other officer shall not take or be allowed any fees other than such as are or shall be from time to time allowed by lawful authority for the execution of the like writs issuing out of the same court in its common law jurisdiction.

For form, see Nos. 109-115.

Common law
rules to apply.

169. The common law rules respecting executions shall, as far as possible, apply in insolvency.

As to the application of the "Rules of the Supreme Court," see O. LIX, r. 1a.

Entry of
satisfaction.
E. R. 234.

170. On satisfaction by levy or otherwise, in whole or in part, the party on whom the order is made may, on delivery of a search stamp, cause such satisfaction to be entered on the order for payment.

As to every application for search for proceedings requiring a 1s. stamp, see table II.

171. Unless such satisfaction shall appear by the return of the writ, or shall be admitted by the party in whose favour the order shall be made, or his attorney, application must be made to the court to order such entry of satisfaction.

General Rules
1st Oct., 1874.
rr. 171-175.

Application to
enter
satisfaction.
E.R. 235.

Duties of Accountant, and the Books and Accounts to be kept by Registrars and Trustees.

172. [Sect. 192.] The accountant shall keep a book entitled "The Register of Insolvencies in Brisbane," and another book entitled "The Register of Insolvencies in Bowen," according to the form in the schedule, with such additional headings as he may find necessary.

Accountant's
books.
E.R. 237.

See also s. 196; for form of the register of insolvencies, see No. 84.

173. The accountant shall cause an entry to be made in the proper register of every gazetted notice applicable or defined by the headings, and shall cause such registers to be examined on every Monday with the then last published *Gazette*, so as to insure that all the notices published therein have been duly entered in such registers.

Entries in
accountant's
books.
E.R. 238.

174. The registers shall be open for searches by the public at all hours that the office of the accountant is open, upon a request in writing with a search stamp affixed thereon being lodged.

Searching
accountant's
books.
E.R. 239.

As to every application for search for proceedings requiring a 1s. stamp, see table II.

175. The registrar of the Supreme Court, and every registrar of a district court having jurisdiction in insolvency, shall keep books according to the forms in the schedule, and the particulars given under the different heads in such books shall be entered forthwith after the proceeding shall be had.

Registrar's
books.
E.R. 240.

For forms of the insolvency book and of the debtor's summons book, see No. 85.

General Rules

1st Oct., 1874.

rr. 176-182.

Extracts to be
sent to
accountant.
E.R. 241.

"The Record"
to be kept by
trustee.
E.R. 242.

"Estate Book"
to be kept by
trustee.
E.R. 248.

Inspection of
trustee's books.
E.R. 244.

Trustee to
submit books
to inspectors.
E.R. 245.

Audit of estate
book and copy.
E.R. 246.

Return to be
made by
trustee to the
accountant.
E.R. 247.

176. The registrars shall make and transmit such extracts from such books as the accountant may from time to time require to be made and transmitted to him.

177. The trustee shall keep a book to be entitled "The Record," in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or of the committee of inspection, statement of insolvent's affairs, reports, and all proceedings necessary to give a correct view of the management of the insolvent's property; but he shall not be bound to insert in the record any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors), nor need he exhibit such document to any person other than the members of the committee of inspection.

178. The trustee shall also keep a book to be entitled "The Estate Book," according to the form in the schedule, in which he shall enter from day to day the receipts and payments made by him.

For the form of the book, see No. 86.

179. The record and the estate book may be inspected by the committee of inspection and the creditors or their agents.

See rr. 9, 12.

180. The trustee shall submit the record and estate book, together with a copy of the latter, to the committee of inspection, at each of the meetings required by section 123 of the Act.

181. The committee of inspection shall audit the estate book, and certify therein under their hands the day on which the said book was audited, and shall in like manner certify the copy of the said book.

182. The trustee shall, forthwith after the said audit shall have been held, transmit to the accountant the copy so

certified, adding thereto his certificate that it is the copy certified by the committee. He shall also forward there-with an office copy of the statement of affairs filed by the insolvent, showing thereon in red ink the difference between the sums stated by the insolvent and the sums realised or estimated by the trustee to be realised, and shall also state the reasons why any property not realised has not been realised.

General Rules
1st Oct., 1874.
rr. 183-185.

183. Every trustee, before calling a meeting of the creditors to consider an application to be made by him to the court for his release, shall apply to the accountant for a report on his accounts, and the accountant shall make such report and transmit it to the trustee, who shall produce the same at such meeting and to the court when making such application.

Accountant's
report to be
produced by the
trustee on his
application for
his release.
E.R. 248.

See also r. 106.

184. Upon a trustee resigning, or being released or removed from his office, he shall deliver over to the accountant all books kept by him, and all other books, documents, papers, and accounts in his possession in any way relating to the office of trustee.

Trustee to
deliver books to
the accountant.
E.R. 249.

185. [Sect. 193.] Each trustee shall, within fourteen days after the 31st day of December in each year, transmit to the accountant a statement according to the form in the schedule of every insolvency in which he is a trustee, and the accountant shall cause the returns so made to be regularly bound up and preserved, according to alphabetical order of the courts in which the proceedings were had, in volumes to be kept at all times in his office, with an index thereto framed by him, and which volumes may be searched by the public; and any trustee who shall fail to make such return may be removed from his office by the court at the instance of any one creditor, or of the accountant, or be subject to such order and to such costs as the court may think proper to make.

Annual returns
by trustees.
E.R. 250.

General Rules By the rules of the 17th August, 1877, r. 9, the words "30th day 1st Oct., 1874. of June and the " shall be inserted and read immediately before the rr. 186-188. words "31st day of December" in this rule. For the form of the annual return, see No. 87.

Conduct of trustees.
E.R. 251.

186. The accountant shall take cognizance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties and duly observing all the requirements imposed on him by statute, rules, or otherwise, relative to the performance of his duties, or in the event of any complaint being made to the accountant by any creditor in regard thereto, he shall inquire into the same, and if not satisfied with the explanation given he shall report thereon to the court, which, after hearing the trustee, may remove him from his office, or otherwise make such order in the matter as the justice of the case may require.

*Proceedings for Liquidation by Arrangement
or Composition with Creditors.*

[Sections 202 and 204.]

Commencement of proceedings.
E.R. 252.

187. Proceedings under these sections shall be instituted by the debtor by petition and affidavit thereto annexed according to the forms given in the schedule.

As to every petition under these ss. requiring a £2 stamp, see table II. For form of petition, see No. 88; of affidavit in support, No. 89. Every petition is to be dated the day on which it is signed, Reg. Gen., 17th August, 1877, r. 6, *post*.

Place and time of first meeting.
E.R. 254.

188. The first general meeting shall be summoned, to be held at the place mentioned in the affidavit filed with the petition (subject to such place being changed by order of the court, as hereinafter provided), and the time of meeting shall be at a stated hour between 10 a.m. and 5 p.m. on a day within one calendar month from the presentation of the petition, unless the court in any particular case shall otherwise order.

As to change of place, see r. 193.

189. The first general meeting of creditors shall be summoned by notice according to the form in the schedule.

General Rules
1st Oct., 1874.
rr. 189-193.

For form of notice to creditors of general meeting, see No. 90 ; of affidavit of debt to be annexed to the notice summoning first general meeting, see No. 91.

Notice of first
meeting.
E.R. 255.

190. All first general meetings shall be summoned as follows :—A sufficient number of forms of such notice, duly signed, addressed, and stamped for post, shall be delivered to the registrar, together with a request and list of creditors, according to the forms in the schedule, and such list may be added to, or additional requests and lists be filed, as circumstances may require. Every request shall bear a stamp calculated at the rate of threepence for each notice required to be sent. The registrar shall cause the notices to be checked with the list or lists delivered to him, and to be sealed with the seal of the court, and to be posted to the creditors, and the person posting the same shall forthwith make and file an affidavit, exhibiting a form of notice, and stating that he had posted similar notices to the persons mentioned in the lists delivered to the registrar, and stating also the date and place of posting.

Summoning
first meeting.
E.R. 256.

For form of request with list of creditors, see No. 92.

191. The debtor shall also deliver to the registrar a notice according to the form in the schedule, to be gazetted seven days at least before the meeting is to be held.

Notice to be
gazetted.
E.R. 257.

For form of notice of general meeting, see No. 90 ; of affidavit to be annexed to notice, No. 91 ; notice for the *Gazette*, No. 93.

192. Notices summoning any first general meeting shall be posted at least fourteen days before the day on which the meeting is to be held.

Time of sending
notices.
E.R. 258.

193. Upon sufficient cause proved to the satisfaction of the court by the debtor or by any creditor, either *ex parte* or otherwise, the court may order and direct the place of any general meeting to be changed, provided application be

Change of place
of meeting.
E.R. 259.

General Rules made in such time as will allow notice of the change to be
1st Oct., 1874. given to the creditors as hereinafter directed. Any order
rr. 194-195. so made by the court shall be according to the form in the
 schedule, and a copy thereof shall be gazetted forthwith,
 and notice thereof shall be given by the registrar by sending
 by post, on or before the eighth day prior to the meeting,
 a sealed office copy of the order of the court addressed to
 the several creditors, and to the debtor. The expense of
 and incident to such order, and despatching copies thereof
 to the creditors as aforesaid, shall be borne and paid in such
 manner as the court shall direct; and in case of non-com-
 pliance, the copies of the order shall not be sent, but the
 meeting shall be held as originally summoned.

For form of order changing place of meeting, see No. 94.

**Injunction
 against other
 proceedings.
 Appointment of
 receiver by
 court.
 E.R. 260.**

194. The court may at any time after the presentation of
 a petition restrain further proceedings in any action, suit,
 execution, insolvency petition, or other legal process against
 the debtor or his estate in respect of any debt provable; or
 it may allow such proceedings, whether in progress at the
 filing of the petition or subsequently commenced, to proceed
 upon such terms as the court may think just. The court
 may also, at any time after presentation of the petition,
 appoint a receiver or manager of the property or business
 of the debtor, or of any part thereof, and may direct
 immediate possession to be taken of such property or
 business, or any part thereof.

As to adjudicating the debtor insolvent, if the property does not
 appear to be adequately protected under this rule, see r. 200; as to
 proceedings after the resolution for arrangement, see r. 223; as to
 receiver, see rr. 196-198, 212, 231-233.

Case.

An order may be obtained under this rule on an *ex parte* appli-
 cation made immediately after the presentation of a petition for
 liquidation.—*Ex parte J. H. Burns*, 1 Q.L.J., 140.

**Duties of
 receiver.
 E.R. 261.**

195. Any receiver or manager so appointed shall enter
 upon and act in the performance of his office at such time
 and in such manner and to such extent as the court may
 from time to time direct.

196. The debtor shall state in his petition the estimated amount of the debts owing by him to his creditors, and where no receiver or manager has been appointed by the court, a majority in value of such creditors may at any time prior to the passing of the special or extraordinary resolution, as the case may be, nominate and appoint a receiver or manager of the effects or business of the debtor, or any part thereof, according to the form in the schedule. Where any such receiver or manager has been so appointed, he shall investigate the state of the debtor's affairs, and report thereon to the general meeting of creditors. The nomination and appointment of any such receiver shall be confirmed by the court upon summary application in any case in which the debtor refuses to give possession or control to the receiver or manager so appointed. Any such nomination paper shall be in duplicate, and may be signed by the creditors in their individual or partnership names, or by some person who shall state in his signature that he does so by procuration on the creditor's behalf. The signatures or debts need not be verified further than by the affidavit of one of the three principal creditors signing the nomination paper (or a partner in the firm of one of them) according to the form in the schedule, and such affidavit shall be filed in court with one of the nomination papers. If any receiver or manager has been appointed by the court, the nominee of the creditors shall be forthwith substituted in his place, and the court shall order accordingly.

General Rules
1st Oct., 1874.
rr. 196-197.

Statement of
debts in petition
by a debtor.
Appointment of
receiver by
creditors.
E.R. 262.

For the form of the nomination of a receiver or manager by the creditors, see No. 95.

197. Where a receiver or manager has been appointed, the court may at any time cancel his appointment by consent of the debtor and of the creditor or creditors (if any) upon whose application the appointment was made, and of any creditor or creditors whose proceedings may have been restrained as aforesaid, or if the court shall see fit.

Cancelling
appointment of
receiver or
manager.
E.R. 263.

General Rules
1st Oct., 1874.
rr. 198-202.

Custody of
books and
effects.
E.R. 284.

Inspection of
books.
E.R. 285.

Power to
adjudicate
debtor
insolvent, but
proceedings
stayed until
resolution.
E.R. 286.

Procedure in
case no
resolution.
E.R. 287.

Chairman of
meetings.
E.R. 288.

198. Where a receiver or manager has been appointed he shall be entitled to the custody of the books and effects of the debtor, and the debtor or any person having the previous custody thereof on his behalf shall forthwith deliver the same to the receiver.

199. The receiver or manager shall at all times permit the debtor or any of his creditors or their agents to have access to and inspect the debtor's books of account.

200. Where proceedings have been instituted for liquidation or composition, the court may adjudicate the debtor insolvent if, in the opinion of the court, the property of the debtor cannot be sufficiently protected by the exercise of the power hereinbefore given to restrain suits and actions and the appointment of a receiver or manager; but in any such case all proceedings under such order of adjudication shall be stayed immediately upon the making thereof, and until the creditors shall have passed some special or extraordinary resolution in reference to the liquidation or composition, and in the event of any such resolution being duly passed the adjudication shall be forthwith annulled.

As to the transfer of assets, the liquidation being transferred to the insolvency, see r. 224.

201. In the event of any neglect on the part of the creditors to pass such resolution, the court may, on the application of any of the creditors, and after notice to the debtor, make an order of adjudication against the debtor, or direct the insolvency to be proceeded with, as the case may be.

202. The chairman of the first general meeting shall be elected by a majority of the persons present thereat claiming to be or to represent creditors. The chairman of any subsequent general meeting shall be elected by a majority in value of the creditors present or represented thereat who have proved their debts.

As to the election of a chairman, see s. 202 (2) (a).

General Rules

203. Creditors may prove their debts and appoint proxies, as in insolvency.

1st Oct., 1874.
rr. 203-207.

As to proxies, see rr. 70, 71, 205; for form, see No. 23.

Proof and
proxies.
E.R. 239.

204. All debts which would have been provable in insolvency, had the debtor been adjudicated insolvent at the date of the institution of the proceedings, shall be provable under any such proceedings.

Debts which
may be proved.
E.R. 270.

As to debts provable, see s. 140; as to when the liquidation shall be deemed closed, see s. 202 (9).

205. All proofs and proxies intended to be used at any general meeting, and not previously filed, shall be handed in to the chairman of the meeting. Any objection thereto shall be marked thereon by the chairman, and shall be dealt with by the registrar on the resolution being presented to him for registration.

Proofs and
proxies to be
handed to
chairman when
objection to be
dealt with.
E.R. 271.

206. A secured creditor, unless he shall have realised his security, shall, previously to being allowed to prove or vote, state in his proof the particulars of his security and the value at which he assesses the same, and he shall be deemed to be a creditor only in respect of the balance due to him after deducting such assessed value of the security. In cases of liquidation by arrangement any secured creditor so proving shall be bound to pay over to the trustee the amount which his security shall produce beyond the amount of such assessed value, and the trustee shall be entitled, at any time before realisation of such security by the creditor, to redeem the same upon payment of such assessed value. The proof of any such creditor shall not be increased in the event of the security realising a less sum than the value at which he has so assessed the same.

Proof by secured
creditor.
E.R. 272.

207. Where any creditor shall desire to retire from any meeting, and not to be considered as present, he may withdraw his proof, without prejudice to his again proving his debt on any subsequent occasion.

Retiring from
meeting.
E.R. 273.

General Rules 208. The debtor shall produce to the first general
1st Oct., 1874. meeting, and also, in case there be any, to the second
rr. 208-209. general meeting, a statement showing the whole of his

Debtor to
produce
statement at
meetings.
E.R. 274.

debts and assets, and the names and addresses of the creditors to whom such debts respectively are due. The name of each creditor in such statement shall be numbered consecutively, and the list of creditors whose debts do not exceed £10 shall be separated from and follow after the list of those creditors whose debts exceed that amount. The debtor's statement of affairs shall be as near as may be in the form required in insolvency.

For form of insolvent's statement of affairs, see No. 28 ; of list to be added thereto under s. 204, No. 101.

Resolution as
to arrangement
or composition
to be passed and
registered.
E.R. 275.

209. The resolution passed at the first general meeting (or first and second general meetings, as the case may be) shall determine whether the affairs of the debtor are to be liquidated by arrangement, and not in insolvency, or whether any and what composition shall be accepted in satisfaction of the debts due to the creditors from the debtor, or it may reject either of such modes of arrangement. The resolution may declare to whom the registration of the resolution and the debtor's statement of affairs shall be intrusted, and the original resolution and statement shall forthwith be delivered accordingly to the person so appointed ; and in the event of no such declaration being made in the resolution, the same shall be registered by the debtor. Only such resolutions as are reduced into writing, and are signed by or on behalf of the statutory majority of the creditors assembled at a meeting, shall be taken cognisance of by the court, but the signatures of such creditors may be subscribed subsequently to the meeting, but prior to the filing or registration of the resolution.

For form of resolution at first meeting where liquidation resolved on, see No. 97 ; where composition, No. 98 ; as to the contents of the resolution, see rr. 222, 236 ; as to subsequent adjudication, see rr. 200, 201, 224.

210. The chairman shall be bound forthwith to deliver to the person, if any so appointed, or, in default of such appointment, to the debtor, every declaration or affidavit for proof of debt and proxy paper of what nature or kind soever, and whether in due form or otherwise, which shall have been received at the general meeting or meetings, and also the debtor's statement of affairs, and in default thereof may be summoned before the court, and the court may make such order in the matter as it shall think fit.

General Rules
1st Oct., 1874.
rr. 210-213.

Chairman to
deliver proof,
proxies, and
statement to
person
appointed by
creditors or to
the debtor.
E.R. 276.

211. In the event of a liquidation by arrangement being resolved upon at any general meeting, and no trustee with or without a committee of inspection being then appointed, a subsequent meeting shall be held at such time and place, at an interval of not more than a week, as shall be appointed by the resolution, or in default of any such subsequent meeting being so appointed, the same shall be held on the same day in the following week, at the same time and place. No notice of any such subsequent meeting need be given to the creditors.

Second meeting
in case of
arrangement.
E.R. 277.

212. In cases of liquidation by arrangement the general meeting shall by special resolution declare what security, if any, shall be given by the trustee, and what remuneration, if any, the trustee shall receive, or they may resolve to leave his remuneration to the committee of inspection, or to a subsequent general meeting.

Security and
remuneration of
trustee.
E.R. 278

213. Where the creditors at the first general meeting duly pass a resolution that a composition shall be accepted in satisfaction of the debts due to them from the debtor, they shall specify in their resolution the amount of the composition and the instalments and dates at which the same shall be payable, and they may name some person as trustee for receipt and distribution of the composition and any negotiable securities which may be given for the same.

Resolution as to
composition.
E.R. 279.

For form of the resolution, see No. 98.

General Rules
1st Oct., 1874.
rr. 214-216.

Security for
composition or
inspectorship.
E.R. 280.

Deed of
composition or
inspectorship.
E.R. 281.

Resolution
accepting to be
filed; statement,
proofs, and
proxies to be
filed, and second
meeting to be
held.
E.R. 282.

214. Instead of specifying by their resolution the security to be given, the creditors may resolve that the composition, or some part or instalment thereof, shall be secured in such manner as may be approved by a creditor or creditors to be named by the resolution.

215. The extraordinary resolution may provide that the terms of the composition be embodied in a deed between such parties and containing such covenants for payment of the composition, and for protecting and releasing the debtor, and such other covenants and such provisions for securing the composition, either by assignment of property or by inspection of the debtor's business or otherwise, as the nature of the case may require, and as the resolution may specify in particular or general terms.

216. Where, at the first general meeting, a resolution has been passed, resolving that a composition shall be accepted in satisfaction of the debts due to the creditors from the debtor, such resolution shall be filed with the statement of the debtor's affairs, proofs, and proxies, within three days, and another general meeting shall be appointed to be held at an interval of not less than seven days nor more than fourteen days from the date of the meeting at which the resolution was first passed. The second general meeting shall be held at the same place as the first general meeting, unless the resolution at such first general meeting shall have otherwise directed. Notice thereof, according to the form in the schedule, shall be given to every creditor in manner provided with respect to first general meetings, with this addition, that the notice to every creditor who was not present or represented at the first general meeting shall be sent by registered post letter. Such notice shall be sent on or before the sixth day prior to the day on which the second meeting is appointed to be held. In the event of notice not being requested to be sent by the debtor or his attorney on the sixth day prior

to the second meeting, any creditor may file a similar request, desiring the registrar to forward the notices summoning the second meeting; and in the event of any meeting being so summoned it shall be sufficient if the notices are signed by the registrar and sealed, and are posted on the third day prior to the meeting.

General Rules
1st Oct., 1874.
rr. 217-219.

For form of notice convening the second general meeting, see No. 99; as to the person by whom the statement, proofs, and proxies are to be filed, see r. 218.

217. At the second general meeting of creditors, the creditors assembled may confirm the resolution passed at the first general meeting, or they may pass a special resolution that the affairs of the debtor are to be liquidated by arrangement and not in insolvency.

Resolution at
second meeting.
E.R. 238.

For form of the resolution, see No. 100.

218. The person to whom the registration of the special or extraordinary resolution may have been entrusted, or the debtor or his attorney, as the case may be, shall file the same in court, together with the debtor's statement of affairs and all proofs and proxies, within three days after he shall have received the same, or in default thereof shall be summoned before the court, and some person able to depose thereto shall verify and identify the resolutions, statement, proofs, and proxies so filed as being the whole of the resolutions, statement, proofs and proxies come to and produced at the meeting or meetings, when such special or extraordinary resolutions were passed.

Filing
resolution,
proofs, and
proxies.
E.R. 234.

For form of the affidavit, see No. 102.

Resolution directed to be filed after the expiration of the time allowed by this rule.—*Re A. Ross*, July 7th, 1875.

Case.

219. In cases of proceedings for liquidation, by arrangement or composition, instituted by partners, separate meetings of the different classes of creditors shall be held; thus, if the partnership consists of A. B. and C., a meeting of the joint creditors of A. B. and C. shall be first held,

Class meetings
where debtors
in partnership,
same trustees of
joint and
separate
properties,
provision as to
surplus.
E.R. 235.

General Rules and separate meetings of the separate creditors of A. B. 1st Oct., 1874. and C. shall be held at a date or time subsequent to the
 r. 220.

meeting of the partnership creditors. The joint creditors may come to such resolution as they may think fit with regard to the joint estate. The separate creditors may also come to such resolution as they may think fit as regards the liquidation of the estate of their individual debtor, but in the event of their determining upon his insolvency, or the liquidation of his estate by arrangement, they shall choose the same trustee, if any, as has been or shall be appointed by the joint or partnership creditors, but they may appoint a committee of inspection from their own body, if they think fit, or they may adopt the committee, if any, appointed by the joint or partnership creditors. In the event of the separate creditors of any such debtor agreeing to accept a composition, in cases where the joint creditors have resolved on a liquidation by arrangement, the assets of such separate debtor shall be made available by the trustee for or towards the payment thereof, in such manner as the court shall direct and approve, and any surplus of such separate estate remaining in the hands of the trustee, after payment of or provision for such composition, and all proper costs incurred in connection therewith, shall be deemed partnership assets. If in any such case the separate debtor shall be a member of more than one firm, the surplus of his separate estate shall be applied in such manner as the court may direct.

Separate resolution in case of minor partnership, provision as to surplus.
 E.R. 286.

220. If the petition be by partners, and any two or more of such partners constitute a separate and independent firm, the creditors of such firm may likewise come to a separate resolution as regards the liquidation of such minor partnership estate, and where any surplus shall arise upon the liquidation thereof the same shall be carried over to the separate estates of the partners in such minor firm according to their respective rights therein.

221. In cases of proceedings for or towards liquidation by arrangement or composition by an individual debtor, his creditors and debts shall be deemed to be and include not only those creditors to whom or those debts in respect of which he is individually responsible, but also those creditors and debts to whom or in respect of which he is also responsible jointly with any other person or persons; and the statutory majority required for the purpose of any resolution shall be a collective majority of the whole of such joint and separate creditors assembled at any meeting. In any such last-mentioned proceedings the terms of the resolution as regards joint and separate creditors need not be identical, and, if so desired, the resolution may provide for payment of a composition to the separate creditors, and that the rights of the joint creditors shall not be prejudiced or affected thereby.

General Rules
1st Oct., 1874.
rr. 221-223.

Persons deemed
creditors,
different
resolutions may
be passed as to
joint and
separate
creditors.
E.R. 237.

As to the majority, see r. 227.

222. The creditors assembled at any general meeting may include in their resolution a direction that the proceedings be transferred to any district court; and upon any such resolution being filed the proceedings shall be forthwith transferred by the registrar in accordance therewith: and the court to which the same shall have been transferred shall thereafter act in the matter of the proceedings in like manner as if the same had been properly instituted therein in the first instance.

Transfer of
proceedings to
any district
court.
E.R. 238.

223. Every creditor in respect of a provable debt shall, in the event of a liquidation by arrangement being resolved upon, be absolutely restrained from commencing or continuing or enforcing any proceedings whatsoever against the debtor or his property, notwithstanding that such creditor has not received notice of the general meeting, unless the court shall be of opinion that such creditor's rights have been prejudicially affected by the resolution, and that the estate would yield a larger dividend if administered in insolvency.

Restraining
other
proceedings;
after resolution
for arrangement
E.R. 239.

General Rules 224. Where insolvency occurs during the continuance
1st Oct., 1874. of a liquidation by arrangement, the trustee under such
rr. 224-228. liquidation shall pay over and account for to the trustee

Insolvency
occurring
during
liquidation by
arrangement.
E.R. 290.

to be appointed under the insolvency any moneys or property of the debtor which have come to his hands, and in the event of a dividend having been paid to some of the creditors the court shall make such order for the appropriation thereof as will equalise the distribution of the moneys or property amongst the creditors who would or should have been entitled thereto under the liquidation proceedings.

Costs of
arrangement.
E.R. 291.

225. In case of liquidation by arrangement, all proper costs of and incidental to the proceedings prior to the passing of the resolution shall be paid by the trustee out of the estate of the debtor, in like manner and in the like priority as the costs of a petitioning creditor under insolvency petition.

Costs of
arrangement or
composition on
insolvency.
E.R. 292.

226. Where insolvency occurs pending proceedings for or towards liquidation by arrangement or composition with creditors, the proper costs incurred in relation to such proceedings shall be paid by the trustee under the insolvency out of the debtor's estate, unless the court shall otherwise order.

What
constitutes a
majority.
E.R. 293.

227. Where any resolution is required to be passed or any act to be done by the creditors present or represented at any meeting, the majority required for the purpose shall, in the absence of any enactment to the contrary, be a majority in value of the creditors present or represented thereat.

As to who are creditors, see r. 221.

Resolutions if
meeting
adjourned.
E.R. 294.

228. Resolutions duly come to at any meeting shall have full force and effect, notwithstanding that it may also be resolved that for other purposes the meeting shall stand adjourned.

229. Upon presentation of a special or extraordinary resolution for registration the registrar shall examine the same, and may hear any creditor who shall have given him notice of his desire to be heard thereon. The registrar, being satisfied that the requirements of the statute and of these rules have been complied with, shall register the same, making a memorandum thereon, and on the debtor's statement of affairs, as follows:—"Registered day of

General Rules
1st Oct., 1874.
rr. 229-232.

18 Registrar," and shall seal the same with the seal of the court. The registrar, in cases of liquidation by arrangement, shall thereupon deliver to the trustee a certificate according to the form in the schedule. The registration of any special or extraordinary resolution, or the refusal to register the same by the registrar, shall be an act that may be appealed from by the debtor or any creditor who was heard before the registrar on the occasion of such registration or refusal. The registrar shall, where he refuses to register such resolution, certify the grounds of such refusal by memorandum under his hand, and file it with the proceedings.

Registration of
resolution.
Certificate of
trustee's
appointment.
E.R. 235.

For form of the certificate of the trustee's appointment, see No. 103.

As to no objection by the registrar for informality, see r. 234.

230. The resolution and statement so registered shall at all times be open for inspection by any creditor whose name appears on the statement, or by any person on his behalf.

Inspection of
resolution and
statement.
E.R. 236.

231. If a receiver or manager has been appointed, his duties shall terminate upon the appointment of a trustee in cases of liquidation by arrangement, and upon the passing of the extraordinary resolution, in cases of composition, unless such resolution shall otherwise provide.

Termination of
receiver's duties.
E.R. 237.

232. Where a receiver or manager has been appointed and his duties are concluded, he shall render his account, and pay or deliver over any money or property in his hands

Receiver to
account on
conclusion of
his duties.
E.R. 238.

General Rules to the trustee (in cases of liquidation by arrangement), or
1st Oct., 1874. to the debtor or his nominee (in cases of composition).
rr. 233-236.

Control of
courts over
receiver.
E.R. 299.

233. The court shall have the same power and discretion as to the appointment, remuneration, and removal of the receiver or manager, and in the settlement of his accounts, and in directing the appropriation of moneys or property in his hands, as is exercised by the court in its equitable jurisdiction, (a) or as near thereto as may be.

See G.O. XXIV. (Title "Receiver.")

Informalities in
resolutions,
proofs, or
proxies.
E.R. 300.

234. Neither the resolutions nor the proofs or proxies of creditors assembled at any meeting shall be objected to or refused by the registrar by reason of any informality therein, unless he shall be of opinion that such informality is matter of moment, in which event he shall refer the matter to the judge.

As to formal defects not invalidating proceedings in insolvency, see s. 179.

Accuracy of
debtor's
statement.
Debtor to assist
trustee.
E.R. 301.

235. The passing of a special resolution (in the case of liquidation by arrangement) shall be deemed and taken as conclusive evidence that the debtor has complied with the provisions of the statute with regard to the statement of his affairs required to be submitted to the general meetings of his creditors. The debtor shall, however, at all times render to the trustee every information in his power with reference to his debts and assets, and shall in default be liable to be summoned and examined before the court thereon.

As to inadvertent mistakes, see r. 240.

Debtor's
discharge.
E.R. 302.

236. Where liquidation by arrangement and not in insolvency has been resolved on, the creditors may, at the same meeting at which such resolution is passed, resolve whether the debtor's discharge shall be granted either forthwith or at a date to be specified in the resolution, or subject to any and what conditions. In default of any resolution being

(a) See J.A. ss. 4 and 6 as to any judge exercising this power.

then come to as to the debtor's discharge, a general meeting shall be summoned for the purpose of considering the grant thereof, either when the trustees shall see fit, or when the committee of inspection (if any), or when the debtor, with the concurrence of one-fourth in value of his creditors, who have proved, shall require the trustee to summon the same.

General Rules
1st Oct., 1874.
rr. 237-241.

237. The resolution to be come to at any such meeting, and the report thereof to the registrar, and the debtor's discharge, shall be according to the form in the schedule.

Forms as to
discharge.
E.R. 303.

For form of resolution for debtor's discharge, see No. 104; of trustee's report as to, No. 105; debtor's discharge, No. 106.

As to the meeting, see r. 236.

238. General meetings subsequent to the appointment of a trustee shall be summoned by him by giving fourteen days' notice by post to each of the creditors who have proved their debts, stating the object of the meeting and the business proposed to be transacted thereat.

General
meetings after
appointment of
trustee.
E.R. 304.

As to the trustee in insolvency summoning meetings, see rr. 80, 82, 83.

239. A general meeting may, however, at any time be similarly summoned by any creditor, with the concurrence, including himself, of one-fourth in value of the creditors who have proved their debts.

General
meetings
summoned by
creditors.
E.R. 305.

240. Any mistake made inadvertently by a debtor in the statement of his debts may be corrected with the assent of a majority in value of his creditors assembled at a general meeting similarly summoned by the debtor.

Correction of
mistakes in
statement.
E.R. 306.

241. A trustee may be removed by a special resolution of the creditors assembled at a general meeting summoned for the purpose, and another trustee may be appointed in his place, by a majority in value of the creditors then present or represented. Where a trustee shall die, or where for any reason there shall be no trustee acting in

Removal or
death of
trustee.
E.R. 307.

General Rules the liquidation, a general meeting may be summoned in 1st Oct., 1874. manner hereinbefore directed, and another trustee may be rr. 242-246. appointed by the majority in value of the creditors present or represented thereat.

Certificate of
appointment of
new trustee.
E.R. 308.

242. The resolution appointing any such new trustee shall be registered with the registrar, and the certificate of the registrar in respect of the appointment of any such new trustee shall be conclusive evidence of his appointment.

For form, see No. 103.

Creditors
resident abroad
may show cause
against
resolution.
E.R. 309.

243. Any creditor or creditors resident in foreign parts, the notice to whom could not have been received in sufficient time to enable him or them to attend or be represented at the general meeting thereby convened, may show cause to the court against the resolution being proceeded with, notwithstanding its registration; but the same shall not be disturbed unless the creditor or creditors do show or can prove to the satisfaction of the court that, had he or they been present and dissented from the resolution, the same could not have been carried by the statutory majority, and unless also the court is of opinion that it is unjust or inequitable that the resolution should be binding on him or them.

Proof admits
notice of general
meeting.
E.R. 310.

244. Proof of debt by any creditor shall be deemed conclusive evidence that notice of all general meetings, prior to and inclusive of that at which such proof is produced, has been duly given to him.

Proof before
dividend.
E.R. 311.

245. All debts must be proved prior to the payment of dividend thereon by the trustee.

Declaration of
dividends.
Reservation for
non-claimants.
E.R. 312.

246. Seven days at least before declaring any dividend under a liquidation by arrangement, a notice shall be gazetted by the trustee in the form given in the schedule, requiring the creditors to send to him their names and addresses, and the particulars of their debts or claims;

and on declaring a dividend, a sufficient reserve shall be made by the trustee for such dividend upon all debts or claims notified to him in pursuance of such notice. The trustee shall be also deemed to have notice of the debts of all creditors whose names are inserted in the debtor's statement of affairs, and (except where any such debt has been adjudicated upon prior to the declaration of the dividend) a similar reserve shall be made in respect thereof.

General Rules
1st Oct., 1874.
rr. 247-248.

For form of notice to creditors to come in and prove their debts, see No. 107.

247. Wherever the trustee shall reject the claim or proof of any creditor he shall give notice to such creditor by post in the form given in the schedule, and where the creditor is resident in the colony of Queensland, the trustee shall be entitled to exclude from dividend any such claimant or creditor whose debt he so rejects, unless such creditor shall, within thirty days from the time at which the trustee's notice should have been delivered to him in the ordinary course of post, apply to the court to admit his proof, and proceed with such application with due diligence. Where any such creditor is resident beyond the limits of the colony such length of notice shall be given to him as the court shall order.

Rejection of
claim to prove.
E.R. 813.

For notice to claimant of the trustee's rejection of his claim, see No. 108.

248. Except as before mentioned, the trustee shall declare dividends amongst such creditors only as have proved their debts up to the time of such declaration of dividend, and no creditor who has omitted to prove his debt, or to send to the trustee the particulars of his claim, or whose name does not appear in the debtor's statement, shall be entitled to disturb any such dividend, or to make any claim in respect thereof against the trustee; but upon proof of his debt any such creditor shall be entitled to receive the same prior to the payment of any further dividend to the other creditors.

What creditors
entitled to
dividends.
E.R. 814.

General Rules

1st Oct., 1874.

rr. 249-253.

Registrar to
certify and seal
copy and
transmit.
Fees.

Transmission by Telegraph.

249. [Sects. 36, 38, 77, 91.] Whenever any person shall require the contents of any document to be transmitted by telegraph, he shall deliver a copy thereof to the registrar, who, after satisfying himself that such copy is correct, shall certify that it is a true copy, and shall seal the same and cause it to be delivered forthwith to the nearest telegraph office, with a direction under his hand to transmit the contents thereof as required. The fees charged for such transmission shall be paid by the applicant.

General Provisions.

Court to
prescribe for
special cases.

250. In any case not herein provided for, the court may fix such time and prescribe such manner for the doing of any act or giving of any notice as shall in each case seem expedient.

Official trustee's
security.

251. Every official trustee in Brisbane shall give security by bond, with two sureties, to Her Majesty, for the due performance of his duties, to the amount of £1,000; that is to say, the trustee shall be bound, himself in the sum of £500, and each of his two sureties, to be approved of by the registrar, in the sum of £250. Every official trustee out of Brisbane shall give security in like manner to half the above amount.

Scale of Fees.

Attorney's fees.

252. The costs to be allowed to attorneys shall be as specified in table I of the schedule.

Office fees.

253. The office fees shall be as mentioned in table II of the schedule, and shall be collected by stamps.

JAMES COCKLE, C.J.
CHARLES LILLEY, J.
EDMUND SHEPPARD, J.

(By the Judges)

J. MACKENZIE SHAW, Registrar.

NOTE.—The rules in insolvency made since the above follow the forms.

THE SCHEDULE.

- No.
1. Declaration of inability to pay.
 2. Affidavit for summoning a debtor.
 3. Affidavit for summoning debtors in partnership.
 4. Debtor's summons.
 5. Affidavit on application to dismiss debtor's summons.
 6. Order on application to dismiss debtor's summons.
 7. Application for appointment of a receiver, and order thereon.
 8. Substituted service of debtor's summons or petition. Notice in *Gazette*.
 9. Substituted service of debtor's summons or petition. Notice in local paper.
 10. Notice by debtor disputing the truth of statements on petition.
 11. Order to stay proceedings on petition.
 12. Bond on stay of proceedings.
 13. Notice of sureties.
 14. Affidavit of justification.
 15. Dismissal of petition.
 16. Dismissal of petition upon which proceedings are stayed where adjudication made on a subsequent petition.
 17. Adjournment of petition.
 18. Adjudication.
 19. Notice of adjudication and first meeting in local paper.
 20. Order of court for general meeting of creditors.
 21. Restraining action, etc., after insolvency.
 22. Affidavit for proof of debt, with or without security.
 23. Proxy (when not added to proof).
 24. Affidavit of proof of debt by agent of a company.
 25. Minutes of proceedings at first meeting.
 26. List of creditors assembled to be used at every meeting.
 27. Report and certificate of appointment of trustee.
 28. Insolvent's statement of affairs.
 29. Bond of trustee.
 30. Certificate of appointment of trustee.
 31. Notice in *Gazette* and local paper of the appointment of trustee.
 32. Transfer of proceedings.
 33. Certificate of judge for transfer of proceedings.
 34. Notice in *Gazette* of day for last examination of insolvent.
 35. Order to pay debt.
 36. Memorandum of last examination of insolvent.
 37. Notice of meeting to be held on resignation of trustee.
 38. Minutes at meeting for receiving resignation of trustee, &c.
 39. Report and certificate of appointment of trustee to fill a vacancy caused by a resignation.
 40. Notice in *Gazette* of intended dividend.
 41. Application by creditor for order for trustee to pay dividend and order thereon.

General Rules No.

1st Oct., 1874.

Schedule.

42. Report of trustee for closing insolvency.
43. Order on report of trustee as to the closing of an insolvency.
44. Application for directions by trustee.
45. Order on application of trustee for directions.
46. Notice in *Gazette* and local paper of meeting to authorise the trustee to accept a composition.
47. Order to stay proceedings on a composition, &c.
48. Application to annul adjudication under sect. 134.
49. Order annulling adjudication under sect. 134.
50. Notice in *Gazette* and paper of insolvency having been annulled.
51. Application for release by trustee and order thereon.
52. Notice in *Gazette* of day an insolvent will apply for his certificate.
53. Application for certificate.
54. Memorandum of application for certificate.
55. Certificate.
56. Notice to creditors of an insolvent, who has paid an additional sum after close of his insolvency, making up 20s. in the pound, that he will apply for a certificate.
57. Notice in *Gazette* of certificate.
58. Notice in *Gazette* and local paper that a creditor seeks to enforce payment of his debt out of the property of an undischarged insolvent.
59. Search warrant.
60. Warrant of seizure.
61. Warrant against debtor about to quit the colony, &c.
62. Subpoena.
63. Summons under sect. 144 (*in a district court*).
64. Order setting aside pension, &c., under sect. 103.
65. Notice to insolvent under sect. 104.
66. Order setting aside salary or income under sect. 104.
67. Application for enforcement of provision in a composition.
68. Affidavit in support of application for enforcement of provisions of a composition under sect. 134 or 204.
69. Order for enforcement of provisions in a composition.
70. Application by trustee for committal of insolvent or other person.
71. Affidavit in support of application for committal of insolvent for contempt under sect. 122.
72. Affidavit of trustee under sect. 111.
73. Affidavit of person interested in a composition for committal.
74. Notice of application for committal under sect. 122.
75. Notice of application for committal under sect. 111.
76. Notice of application for committal under sects. 134, 204.
77. Order of committal under sect. 122.
78. Order of committal under sect. 111.
79. Order of committal under sect. 134 or 204.
80. Warrant of committal for contempt.
81. Order for discharge from custody on contempt.
82. Warrant to apprehend a person summoned under sect. 114.
83. Order to Postmaster-General.
84. Register of insolvencies.
85. Insolvency book and debtor's summons book.
86. Estate book.
87. Annual return to be made by trustees.
88. Petition under sects. 202, 204.
89. Affidavit in support of petition under sects. 202, 204.

No.	General Rules 1st Oct., 1874. <u>Schedule.</u>
90. Notice to creditors of general meeting.	
91. Affidavit of debt to be annexed to the notice summoning first general meeting.	
92. Request with list of creditors.	
93. Notice for <i>Gazette</i> .	
94. Order changing place of meeting.	
95. Nomination of receiver or manager by creditors.	
96. List of creditors assembled to be used at every general meeting.	
97. Resolution at first general meeting where liquidation by arrangement resolved on.	
98. Resolution at first general meeting where composition resolved on.	
99. Notice convening second general meeting.	
100. Resolution at second general meeting.	
101. To be added to statement of affairs in cases under sect. 204 where necessary.	
102. Form of affidavit to be used upon registration of a special or extraordinary resolution.	
103. Certificate of trustee's appointment.	
104. Resolution for debtor's discharge.	
105. Report of trustee as to debtor's discharge.	
106. Debtor's discharge.	
107. Notice to creditors to come in and prove their debts.	
108. Notice to claimant of trustee's rejection of his claims.	
109. Writ of <i>feri facias</i> on an order for payment of debt admitted in court to be due to the estate of an insolvent.	
110. Writ of <i>feri facias</i> on an order for payment by instalments of debt admitted in court to be due to the estate of an insolvent.	
111. Writ of <i>feri facias</i> on an order for payment of debts admitted in court to be due to the estate of an insolvent, and costs assessed by the court.	
112. Writ of <i>feri facias</i> on an order for payment of costs to be taxed.	
113. Writ of <i>elegit</i> on an order for payment of a debt appearing on examination in court to be due to the estate of an insolvent.	
114. Writ of <i>elegit</i> on an order for payment of debt appearing on examination in court to be due to the estate of an insolvent, and of costs assessed by the court.	
115. Writ of <i>elegit</i> on an order for payment of costs to be taxed.'	

General Rules

1st Oct., 1874.

Schedule.

FF. 1-2.

SCHEDULE OF FORMS. (a)

NOTE.—Proceedings in the Supreme Court are to be entitled, "In the Supreme Court of Queensland, in Insolvency." When a matter has been transferred to a District Court the proceedings are to be entitled, "In the Supreme Court of Queensland, And in the District Court (naming it) in Insolvency."

No. 1.

DECLARATION OF INABILITY TO PAY.

Rule 11. [E.F. No. 1. See s. 44 (4).]

I, the undersigned, *A.B.*, of _____, do hereby
declare that I am unable to pay my debts.

Dated this _____ day of _____ 18 ____
Witness, _____ (Signed) *A.B.*

G.H., Registrar of the _____ Court,
or *L.M.*, attorney [adding address].

A declaration of inability to pay requires a 5s. stamp, see table II.

No. 2.

AFFIDAVIT FOR SUMMONING A DEBTOR.

Rule 13. [E.F. No. 2. See s. 48.]

I, *C.D.*, of _____ make oath and say:—

1. *A.B.*, of &c., is justly and truly indebted to me in the sum of [the amount of the debt] for [&c., stating the nature of the debt with certainty and precision].
2. An account in writing of the particulars of my demand was, on or about the _____ day of _____ 18 __, sent by post [or as the case may be] to the said *A.B.*, and payment of the same has been on more than one occasion required to be made of the said *A.B.*
3. I did, on the _____ day of _____ instant [or last], apply [or cause application to be made] to the said *A.B.* personally [or otherwise, according to the fact], for payment of the said debt.

Sworn, &c.

NOTE.—If the application is made by any other person than the creditor it must be deposed to by such person.

Every affidavit filed other than proof of debt requires a 1s. stamp, see table II.

(a) E.F. refers to the forms in the schedule to the General Rules made in England in pursuance of "The Bankruptcy Act of 1869" (32 and 33 Vic. c. 71), and dated the 1st of January, 1870.

No. 3.

AFFIDAVIT FOR SUMMONING DEBTORS IN
PARTNERSHIP.

General Rules

1st Oct., 1874.

Schedule.

FF. 3-4.

Rule 13. [E.F. No. 3. See s. 48.]

- I, *C.D.*, of _____, make oath and say :—
1. *A.B.* and *C.D.* are justly and truly indebted to me in the sum of [the amount of the debt] for [etc., stating the nature of the debt with certainty and precision].
 2. An account in writing of the particulars of my demand was, on or about the _____ day of _____ 18____, sent by post [or as the case may be] to the said *A.B.* and *C.D.*, and payment of the same has been on more than one occasion required of them.
 3. I did, on the _____ day of _____ instant [or last], apply [or cause application to be made] to the said *A.B.* and *C.D.* [or one of them] personally [or otherwise according to the fact], for payment of the said debt.

Sworn, &c.

NOTE.—If the application is made by any other person than the creditor it must be deposed to by such person.

See note to last form.

No. 4.

DEBTOR'S SUMMONS.

Section 48. Rule 12. [E.F. No. 4.]

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To *A.B.* [or *A.B.* and *C.D.*], of _____

We warn you that unless within _____ days after the service of this summons on you, exclusive of the day of such service, you do pay to *C.D.* of _____, the sum of _____ pounds _____ shillings and _____ pence [and to *F.K.*, of _____, the sum of _____ pounds _____ shillings and _____ pence, and so on if more than two creditors], being the sum [or sums] claimed of you by him [or them], according to the particulars hereunto annexed, for [state consideration], or shall secure or compound for the same to his [or their] satisfaction, you will have committed an act of insolvency, in respect of which you may be adjudged insolvent, on an insolvency petition being presented by the said *C.D.* [and *F.K.*], unless you shall have, within the time aforesaid, applied to the court to dismiss this summons, on the ground that you are not indebted to him [or them] in the sum claimed, or that you are indebted to him [or them] in a sum less than fifty pounds.

Given under the seal of the court, this _____ day of _____ 18____.

Registrar.

[To be endorsed on Summons]

YOU ARE SPECIALLY TO NOTE

That the consequences, which will follow any neglect to comply with the requisitions contained in the summons, are that you may be adjudged insolvent on the petition of *C.D.* [and *F.K.*, &c.] should you not pay to, or secure or compound with him [or them] for

General Rules the sum claimed within _____ days from the service of this
1st Oct., 1874. summons on you.

Schedule. If, however, you are not indebted to the said *C.D.* [and *F.K.*
FF. 5-6. &c.] in the sum claimed, or are only indebted to him [or them] in
a sum less than fifty pounds, you must make application to the
court within the like number of days to dismiss this summons, by
filing an affidavit stating that you are not so indebted, or only
so to a less amount than fifty pounds, with the registrar of the
Supreme Court at _____, who will thereupon fix a day for the
hearing of your application.

L.M., Attorney suing out this summons, carrying on business at

This summons is sued out by *C.D.*, of &c. [and *F.K.*, &c.], in
person.

Every debtor's summons requires a 5s. stamp, see table II.

No. 5.

AFFIDAVIT ON APPLICATION TO DISMISS DEBTOR'S SUMMONS.

Rule 18. [E.F. No. 8. See s. 49.]

In the matter of a debtor's summons by *C.D.* [*F.K.* &c.]
against *A.B.*

I, *A.B.*, of _____, make oath and say :—

I am not indebted to *C.D.* [and *F.K.*, &c.] in the [aggregate]
amount of the sum claimed in the summons [or I am only indebted
to *C.D.* [or *F.K.* or *G.H.*] in sum of _____, being part of
the sum claimed in the summons, or I am not indebted to *C.D.*
[and *F.K.*, &c.] in such an [aggregate] amount as will justify
him [or them] in presenting an insolvency petition against me.

Sworn, &c.

(Signed) *A.B.*

Every affidavit filed, other than proof of debt, requires a 1s. stamp, see
table II.

No. 6.

ORDER ON APPLICATION TO DISMISS DEBTOR'S SUMMONS.

Section 49. Rule 20. [E.R. No. 9.]

In the matter of a debtor's summons by *C.D.* against *A.B.*
Upon the application of *A.B.* to dismiss this summons, and
upon reading the affidavit of *A.B.*, and upon hearing *C.D.* (if
present), it is ordered that this summons be dismissed [and that the
said *C.D.* (or as the case may be) shall pay to the said *A.B.* the sum
of _____ for costs] [or that the said *A.B.* enter into a bond in the
penal sum of [double the alleged debt] with such two sufficient sureties
as the court shall approve of to pay [or deposit with the registrar
the sum of _____ as security for the payment of] such sum or
sums as shall be recovered by *C.D.* [or as the case may be] against
the said *A.B.* in any proceedings taken or continued against him for
the recovery of the demand mentioned in such summons, together
with such costs as shall be given by the court in which such proceed-
ings are had.

Given under the seal of the court, this 18 . day of .
By the Court, Registrar. FF. 7-8.

No. 7.

C.D.

Given under the seal of the court, this day of
18 . By the Court,
 Registrar.

Dated this day of 18 . Registrar

General Rules

1st Oct., 1874

Schedule.

FF. 9-11.

No. 9.

SUBSTITUTED SERVICE OF PETITION. NOTICE IN
LOCAL PAPER.

Rule 49. [E.F. No. 18.]

To A.B., of , &c.

Take notice that an insolvency petition has been presented against you, to [or a debtor's summons has been granted against you by] this court, by [or on the application of] C.D. of , and the court has ordered that the publication of a notice of the petition [or summons] in the *Gazette* shall be deemed to be service of the petition [or summons] upon you on the day after such publication; and further take notice that you are required to appear to the said petition within days of such service, and if you do not appear the court may adjudge you insolvent in your absence.

The petition [or summons] can be inspected by you on application at this court.

Dated this day of , 18 . Registrar.

No. 10.

NOTICE BY DEBTOR DISPUTING THE TRUTH OF
STATEMENTS IN PETITION.

Rule 27. [E.F. No. 17. See s. 61.]

In the matter of an insolvency petition presented against me on the day of 18 , by C.D. of [or and E.F. of G.H. of &c.].

I, A.B., do hereby give you notice that I intend to dispute that adjudication should be made as prayed on the hearing of the petition, at which time I intend to dispute the petitioning creditor's debt [or the act of insolvency].

Dated this day of , 18 . A.B.

To C.D., of , and to ,
Registrar of the said court.

No. 11.

ORDER TO STAY PROCEEDINGS ON PETITION.

Section 64. [E.F. No. 13.]

In the matter of an insolvency petition against A.B. of
Upon the hearing of this petition this day, and the said A.B. appearing and denying that he is indebted to the petitioner [*where petition presented by more than one creditor, add the name of the creditor whose debt is denied*] in the sum stated in the petition [or that he is indebted to the petitioner in a sum of a less amount than fifty pounds], [or that he is indebted to C.D., one of the petitioners, in a sum less than the sum stated to be due from him in the petition], it is ordered that the said A.B. shall within days enter into a bond in the penal sum of [*double the alleged debt*] with such two sufficient sureties as the court shall approve of to pay [or deposit with the registrar the sum of as security for the payment of] such sum or sums as shall be recovered against

1st Oct., 1874.
Schedule.

F. 12.

day of

By the Court,

Registrar.

BOND ON STAY OF PROCEEDINGS.

Know all men by these presents, that we, *A.B.*, of &c., and *C.D.*, of &c., and *E.F.*, of &c., are jointly and severally held and firmly bound to *L.M.*, of &c., in _____ pounds to be paid to the said *L.M.*, or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves and each and every of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

day of

Whereas an insolvency petition against the said *A.B.* having been presented to the Supreme Court of Queensland, he did appear at the hearing of the said petition and deny that he was indebted to the petitioner [or to one or more of the petitioners], [or allege that he was indebted to the petitioner in the sum of pounds only].

[Or Whereas the said *A.B.* having been duly served with a debtor's summons by *L.M.* of _____ in accordance with the provisions of "*The Insolvency Act of 1874*," issued out of the Supreme Court of Queensland, applied to the said court to dismiss such summons on the ground that he was not indebted to the said *L.M.* [or that he was not indebted to him to such an amount as would support a petition in insolvency].

Now, therefore, the condition of this obligation is such that if the above-bounden *A.B.*, or the said *C.D.* or *E.F.*, shall on demand well and truly pay or cause to be paid to *L.M.*, his attorney or agent, such sum or sums as shall be recovered against the said *A.B.* by any proceedings taken or continued within twenty-one days from the date hereof, in any competent court by the said *L.M.* for the payment of the debt claimed by him in the said petition [or debtor's summons], together with such costs as shall be given to the said *L.M.* by such court, this obligation shall be void, otherwise shall remain in full force.

[L.S.]

[L.S.]

[L.S.]

Signed, sealed, and delivered by the above-bounden
in the presence of

NOTE. --If a deposit of money be made, the memorandum should follow the terms of the conditions of the bond.

Every bond with sureties requires a 5s. stamp, see table II.

General Rules

1st Oct., 1874.

Schedule.

FF. 13-14.

No. 13.

NOTICE OF SURETIES.

[E.F. No. 20.]

In the matter of an insolvency petition against *A.B.*, of
 , [or In the matter of a debtor's
 summons by *C.D.*, of , against *A.B.*, of
].

Take notice, that the sureties whom I propose as my security
 in the above matter are [here state the full names and additions of
 the sureties and their residences for the last six months, therein
 mentioning the town or city, places, streets, and numbers, if any].

Dated this day of 18 .

A.B.

To the Registrar of the Court and *L.M.* of

No. 14.

AFFIDAVIT OF JUSTIFICATION.

[E.F. No. 21.]

In the matter of an insolvency petition against *A.B.*, of
 [or In the matter of a debtor's summons
 by *L.M.* against *A.B.*, of].

I, *E.F.*, of , one of the sureties for ,
 make oath and say :—

1. I am a housekeeper [or as the case may be], residing
 [describing particularly the residence].
2. I am worth property to the amount of £ [the
 amount required] over and above what will pay my just
 debts [if security in any other action or for any other
 purpose add, and every other sum for which I am now
 security].
3. I am not bail or security in any other matter, action, or
 proceeding, or for any other person [or if security in
 any other action or actions, add except for *C.D.*, at the
 suit of *E.F.*, in the court of in the sum of
 £ , for *G.H.* at the suit of *J.K.*, in the
 court of , in the sum of £ ,
 specifying the several actions with the courts in which they
 are brought and the sums in which he has become bound].
4. My property, to the amount of the said sum of £
 [and if security in any other action, &c., over and above
 all other sums for which I am now security as aforesaid],
 consists of [here specify the nature and value of the
 property in respect of which the deponent proposes to
 become bondsman as follows, stock-in-trade in my business
 of carried on by me at of the
 value of £ of good book debts owing to me to
 the amount of £ of furniture in my house at
 of the value of £ of a freehold
 (or leasehold) farm of the value of £ situate
 at occupied by or of a dwelling
 house of the value of £ situate at
 occupied by or of other property, particu-
 larising each description of property, with the value
 thereof].

5. I have for the last six months resided at
 [describing the place of such residence, or if he has had
 more than one residence during that period, state it in the
 same manner as above directed.]
 Sworn at, &c.
- General Rules
 1st Oct., 1874.
 Schedule.
 E.F. FF. 15-17.

No. 15.

DISMISSAL OF PETITION.

[E.F. No. 23. See s. 63.]

In the matter of an insolvency petition against *A.B.*, of

Upon the hearing of this petition this day, the court being satisfied that the debt [or debts] of the petitioning creditor [or creditors] is [or are] not sufficient to support a petition in insolvency [or that the debtor did not commit the act of insolvency stated to have been committed], it is ordered that this petition be dismissed [and that the petitioner do pay to the said *A.B.* the taxed costs thereof].

Given under the seal of the court, this day of
 18 .

By the Court,

Registrar.

No. 16.

DISMISSAL OF PETITION UPON WHICH PROCEEDINGS
 ARE STAYED WHERE ADJUDICATION MADE ON A
 SUBSEQUENT PETITION.

Rule 35. [E.F. No. 24. See ss. 64, 65.]

In the matter of an insolvency petition against *A.B.* of
 , presented by *C.D.* of

Whereas *A.B.* has been adjudged insolvent upon a petition presented to this court by *O.P.*, of , it is ordered that the insolvency petition against the said *A.B.*, presented to this court by *C.D.*, of , the proceedings in which were stayed by order of court of the day of 18 , be dismissed [and terms if any].

Given under the seal of the court, this day of
 , 18 .

By the Court,

Registrar.

No. 17.

ADJOURNMENT OF PETITION.

[E.F. No. 25. See s. 63.]

In the matter of an insolvency petition against *A.B.*, of

Upon the hearing of this petition this day, it is ordered that the further hearing of this petition be adjourned until the
 day of , 18 , at o'clock in the noon.

Given under the seal of the court this day of
 , 18 .

By the Court,

Registrar.

General Rules

1st Oct., 1874.

Schedule.

FF. 18-20.

No. 18.

ADJUDICATION.

Section 69. [E.F. No. 26. See ss. 63, 70.]

In the matter of an insolvency petition against *A.B.*, of
 , by the said *A.B.* [or *L.M.*]

Upon the hearing of this petition this day [and upon proof, satisfactory to the court, of the debt of the petitioner and of the act (or acts) of insolvency alleged to have been committed by the said *A.B.* having been given], it is ordered that the said *A.B.* be and he is hereby adjudged insolvent, and that *C.D.* be official trustee of his estate. And it is further ordered that the first general meeting of the creditors of the said *A.B.*, for the election of a trustee, be held at the office of the registrar of this court [or as the case may be] on the day of , 18 , at o'clock of the noon. And it is further ordered that the said *A.B.* shall on the day of , at , deliver to the trustee in this estate a full, true, and accurate statement, verified on oath, of his debts and liabilities of every kind, and of the names and residences, so far as known, of his creditors, and of the causes of his inability to meet his engagements.

Given under the seal of the court, this day of , 18 .

By the Court,

Registrar.

No. 19.

NOTICE OF ADJUDICATION AND FIRST MEETING IN
LOCAL PAPER.

Section 70. Rules 36 and 77. [E.F. No. 27.]

A.B., of , was adjudged insolvent on the
 day of , 18 .

The first meeting of creditors will be held at on the
 day of 18 .

Until the election of a trustee, all persons having in their possession any of the effects of the insolvent must deliver them, and all debts due to the insolvent must be paid to Mr. *C.D.*, the official trustee in the estate. Creditors must forward their proofs of debts to the official trustee.

Registrar.

No. 20.

ORDER OF COURT FOR GENERAL MEETING
OF CREDITORS.

Rule 7. [E.F. No. 30. See s. 125.]

In the matter of *A.B.*, of , an insolvent.

Upon the application of *C.D.*, of [leave out these words if court order meeting without an application, and begin, At a court holden this day], it is ordered that the trustee of the property of the insolvent do summon a meeting of the creditors of the insolvent to be held at on the day of 18 , at o'clock of the

noon [here state the purpose for which meeting called], [and that the General Rules registrar of this court do preside at such meeting].

Given under the seal of the court, this

day of 1st Oct., 1874.

18 .

By the Court,

Registrar. Schedule.
FF. 21-22.

No. 21.

RESTRAINING ACTION, &c., AFTER INSOLVENCY.

Section 77. [E.F. No. 31.]

In the matter of an insolvency petition against A.B., of

Upon the application of and upon reading his affidavit, it is ordered that L.M., of , shall be restrained from taking any further proceedings in the action [or suit] brought by him [or upon the judgment [or decree] recovered or obtained by him] against the said A.B. in [here state the court in which proceedings are] [or it is ordered that the proceedings in the action [or suit] brought by him against the said A.B. in [here state the court in which proceedings are] may be proceeded with on [here insert the terms fixed by the court].

Given under the seal of the court, this

day of

18 .

By the Court,

Registrar.

No. 22.

AFFIDAVIT FOR PROOF OF DEBT WITH OR WITHOUT SECURITY.

Rules 53, 70. [E.F. No. 32.]

In the matter of A.B., of , an insolvent. I, C.D., of , make oath and say :—

1. The said A.B. was at the date of the order of adjudication and still is justly and truly indebted to me in the sum of for [state consideration], for which said sum or any part thereof I say that I have not nor hath any person by my order or to my knowledge or belief for my use had or received any manner of satisfaction or security whatsoever, save and except the following :—

[Here set out the particulars of the security, and the value at which the creditor has assessed the same, or if bills be held, specify them in a schedule].

Date.	Drawn.	Acceptance.	Amount.			Date when due.

Sworn at

In the case of preliminary proof under s. 90 the creditor is to make his affidavit in this form with the following additions:—"And I further say that the said sum does not include any unliquidated or contingent debt, or any debt the value of which is not ascertained." Reg. Gen., 29th August, 1878, r. 1, *post*.

As to filing and transmission of such affidavit, see *ibid*, r. 2, *post*.

NOTE.—When the creditor desires that his proxy shall receive dividends he should strike out the words "excepting as to the receipt of dividends," putting his initials thereto.

In the matter of *A.B.*, of _____, an insolvent.
 I, _____, of _____, secretary [or manager or other
 officer] of _____ [here state name of corporation], make
 oath and say, I am duly authorised to make this proof of debt on
 its behalf [then follow last affidavit, altering form accordingly].

We, the undersigned creditors, being a majority in value of the creditors present, personally or by proxy, at this meeting, and voting on this resolution, do hereby resolve as follows:—

That *G.H.*, of [*residence and occupation*], shall be the trustee of General Rules the property of the insolvent at [*here state remuneration*] [or such remuneration as the creditors may from time to time determine] 1st Oct., 1874. [or That the appointment of a trustee in this insolvency be made by the committee of inspection]. Schedule.

F. 26.

That *I.K.*, *L.M.*, *N.O.*, *P.Q.*, and *R.S.* be appointed the committee of inspection in this insolvency, for the purpose of superintending the administration of the property of the insolvent by the trustee.

[Where security is required add as follows:--That the trustee do give security by bond to _____ in the amount of _____ pounds himself and two sufficient sureties [or that *F.M.* and *K.L.* be his sureties], [or by depositing the sum of _____ pounds with the Registrar] [or by giving the security of (*here insert the guarantee association or company resolved on*) in the sum of _____ pounds].

[Here add any other resolutions that may be come to as to the manner of the administration of the property by the trustee, the transfer of the proceedings to another court, the appointment of a bank, &c.]

F.K., Chairman.

[Here follow the creditors' signatures.]

Creditors' Signatures.	Amount of Debt.

No. 26.

LIST OF CREDITORS ASSEMBLED TO BE USED AT EVERY MEETING.

[E.F. No. 36.]

In the matter of *A.B.*, an insolvent.
Meeting held at _____ this _____ day of _____ 18 .

No. of Assents of Creditors.	Number.	Names of Creditors present, or assembled.	Amount of Assent.	Amount of Proof.
1	1			
	2			
1	3			
1	4			
	5			
1	6			
1	7			
	7	Total number of creditors present or assembled.		
5	Total	number of assents.		
		Total £		

General Rules

1st Oct., 1874.

Schedule.

FF. 27-28.

No. 27.

REPORT AND CERTIFICATE OF APPOINTMENT OF TRUSTEE.

Section 92, paragraph 1. [E.F. No. 38. See s. 94 and r. 89.]

In the matter of *A.B.*, of _____, an insolvent.

It is reported to the court as follows :—

1. That the first meeting of the creditors in this insolvency was held at _____ on the _____ day of _____ at _____ o'clock in the _____ noon, as ordered by this court.
2. That by resolution at such meeting *G.H.*, of _____ was appointed to fill the office of trustee of the property of the insolvent.
3. That by another resolution it was declared that the said *G.H.* should give security for the due performance of the said office, by entering into a bond, in the sum of _____ with two sufficient sureties [or as the case may be].

X.Y., Registrar,

or

F.K., Chairman.

No. 28.

INSOLVENT'S STATEMENT OF AFFAIRS.

Sections 69, 122. Rule 73. [E.F. No. 39.]

In the matter of *A.B.*, of _____, an insolvent.Statement of the affairs of the above *A.B.* on the [here insert date of institution of proceedings].

	£	s.	d.		£	s.	d.
Unsecured creditors, as per list (A)				Stock-in-trade at [state name of place], estimated at ..			
				Book debts, about £ ..			
Creditors fully secured, as per list (B) ..	£	s.	d.	estimated to produce ..			
Less estimated value of securities ..				Cash in hand			
Surplus to contra ..	£			Bills of exchange or other similar securities, estimated to produce			
				Furniture, fixtures, and fittings at			
				to produce			
Creditors partly secured, as per list (C) ..	£	s.	d.	Property, as per list (G) ..			
Estimated value of securities				Surplus from securities in the hands of creditors fully secured, see contra			
Other liabilities, as per list (D) ..							
Creditors for rent, rates, taxes and wages, as per list (E) ..							
Liabilities on bills discounted, as per list (F), £ ..							
Of which it is expected will rank against the estate for dividend ..							
Total debts £				Total assets £			

A.B.

SCHEDULE OF FORMS.

233

A. LIST OF CREDITORS.

General Rules
1st Oct., 1874.
Schedule.
F. 23.

Name.	Address.	Amount of Debt.		
		£	s.	d.

B. LIST OF CREDITORS FULLY SECURED.

Name of Creditor.	Address.	Estimated value of Security.			Amount of Debt.		
		£	s.	d.	£	s.	d.
A.B.	Brisbane						
[Here state particulars of securities, and add]							
	Estimated to produce						
C.D.	Rockhampton						
[Here state particulars as above.]							
	Estimated to produce						
Total estimated value of securities £							
Total amount of Debts of Creditors holding security £							

C. CREDITORS PARTLY SECURED.

Name of Creditor.	Address.	Estimated value of Security.			Amount of Debt.		
		£	s.	d.	£	s.	d.
<i>[Follow instructions as to list of creditors fully secured.]</i>							
Total estimated value of securities £							
Total amount of Debts of Creditors partly secured £							
Surplus £							

H.
CAUSE OF INSOLVENCY.

General Rules
1st Oct., 1874.

J.

Schedule.
F. 29.

A LIST OF ALL BOOKS, PAPERS, AND DOCUMENTS BELONGING TO THE ESTATE [specifying whether the same have been already given up, or are in the custody of the insolvent, or any other and what person, and under what right or circumstances.]

Affidavit verifying statement.

In the matter of *A.B.*, of _____, an insolvent.
I, *A.B.*, of _____, the above-named insolvent, make oath and say, that the statement of affairs, and the several paper writings hereunto annexed, marked respectively A, B, C, D, E, F, G, H, and J, contain full, true, and accurate statements of the several matters therein respectively set forth.

No. 29.

BOND OF TRUSTEE.

Section 92, paragraph 2, and Rule 89. [E.F. No. 40.]

Know all men by these presents, that we, *G.H.*, of &c., and *C.D.*, of &c., and *E.F.*, of &c., are jointly and severally held and firmly bound to *L.M.* [the Registrar of the Supreme Court] in £ _____ to be paid to the said *L.M.*, or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this _____ day of _____ one thousand eight hundred and _____

Whereas on the _____ day of _____ 18 _____, *A.B.*, of _____, was adjudged insolvent; and whereas at the first meeting of creditors under the said insolvency the said *G.H.* was appointed trustee of the property of the insolvent; and whereas it was resolved that the said trustee should give security by bond to [here state to whom] in the sum of _____, with two sufficient sureties thereto.

Now, therefore, the condition of this bond or obligation is such that if the said *G.H.* shall and do from time to time well and sufficiently perform and execute all and singular the duties required of him as trustee by "The Insolvency Act of 1874," or any rule of court made or hereafter to be made under such Act, this obligation shall be void, or otherwise shall remain in full force and virtue.

Signed, sealed, and delivered by the	} in	<i>G.H.</i>	[L.S.]
above-bounden		<i>C.D.</i>	[L.S.]
the presence of		<i>E.F.</i>	[L.S.]

NOTE.—If a deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.

Every bond with sureties requires a 5s. stamp, see table II.

General Rules

1st Oct., 1874.

Schedule.

FF. 30-33.

No. 30.

CERTIFICATE OF APPOINTMENT OF TRUSTEE.

Rule 89. [E.F. No. 41. See s. 94.]

This is to certify that *G.H.*, of _____, has been duly appointed trustee of the property of *A.B.*, of _____, adjudicated insolvent on the _____ day of _____ 18 ____.

Given under the seal of the court, this _____ day of _____ 18 ____.

Registrar.

No. 31.

NOTICE IN GAZETTE AND LOCAL PAPER OF THE APPOINTMENT OF TRUSTEE.

Rule 94. [E.F. No. 42.]

In the matter of *A.B.*, of _____, an insolvent.
G.H., of _____, has been appointed trustee of the property of the insolvent.

All persons having in their possession any of the effects of the insolvent must deliver them to the trustee, and all debts due to the insolvent must be paid to the trustee.

Creditors who have not yet proved their debts must forward their proofs of debts to the trustee.

Dated this _____ day of _____ 18 ____.

Registrar.

No. 32.

TRANSFER OF PROCEEDINGS.

Rule 67. [E.F. No. 22. See ss. 18, 177 (4), rr. 66-69.]

In the matter of *A.B.*, an insolvent.

Upon the application of *C.D.*, the trustee in this matter [or the said *A.B.*, or *E.F.*, a creditor of the said *A.B.*], and it appearing to the court that it is expedient to make this order, it is ordered that the proceedings in this matter [or such part of the proceedings in this matter as relates to, *stating the part of the proceedings*] be transferred to the _____ District Court [*stating district court*] and that the written proceedings [or such part, &c., *stating what part*] in this matter [or office copies of the proceedings, &c.], be transmitted to the said court.

Given under the seal of the court, this _____ day of _____ 18 ____.

By the Court,

Registrar.

No. 33.

CERTIFICATE OF JUDGE FOR TRANSFER OF PROCEEDINGS.

Rule 68. [E.F. No. 37. See s. 177 (4).]

In the matter of *A.B.*, of _____, an insolvent.

I hereby certify for the following reasons that proceedings [or part of the proceedings, *specifying them*], in this insolvency would in my opinion be more advantageously conducted in the [District Court, *specifying it.*] [*Here set out reasons.*]

Dated this _____ day of _____ 18 ____.

F.H., Judge.

No. 34.

General Rules

NOTICE IN GAZETTE OF DAY FOR LAST EXAMINATION OF INSOLVENT.

1st Oct., 1874.

Section 164. Rule 81.

Schedule.

FF. 34-36.

In the matter of *A.B.*, of _____, an insolvent.
 The court has appointed the last examination of the insolvent
 to take place at _____ on the _____ day of
 _____, at _____ o'clock in the _____ noon.
 Dated this _____ day of _____ 18 _____
 Registrar.

No. 35.

ORDER TO PAY DEBT.

Section 117. [E.F. No. 44.]

In the matter of *A.B.*, of _____, an insolvent.
 Whereas *J.K.*, of _____, in his examination
 taken this day, and signed and subscribed by him, has appeared to
 be indebted to the said insolvent in the sum of _____ pounds,
 on the balance of accounts between him and the insolvent: it is
 ordered that the said *J.K.*, do pay to the trustee of the property of
 the insolvent, in full discharge of the sum so admitted, the sum of
 _____ pounds forthwith [or if otherwise, state the time and
manner of payment], and do further pay to the said trustee the sum
 of _____ pounds for costs.

Given under the seal of the court [or my hand and seal], this
 _____ day of _____ 18 _____

By the Court,

Registrar, or P.M.

No. 36.

MEMORANDUM OF LAST EXAMINATION OF
INSOLVENT.

Section 164. [E.F. No. 45.]

In the matter of *A.B.*, of _____, an insolvent.
 Memorandum.—That I, _____, the above-named
 insolvent, being sworn and examined, upon my oath say, that the
 statement of accounts filed on the (a) _____ day of _____
 18 _____, with the proceedings in the above matter, containing
 _____ sheets of paper, and now produced and shown to me,
 and marked (b) &c., is true, and that the said statement of accounts
 doth contain and is a full and true disclosure and discovery of all
 my estate and effects both real and personal whatsoever and where-
 soever. And I further say, that at the time of this my examination,
 I have delivered up to the trustee of my property all such parts of
 my goods, wares, and merchandises, money, estate and effects, and
 all books, papers, and writings relating thereto, as were in my
 custody, possession or power. And I further say that I have not
 removed, concealed, embezzled, or destroyed any part of my estate,
 real or personal, nor any books of accounts, papers, or writings
 relating thereto, with an intent to defraud my creditors.

[Here insert any special matter.]

A.B.

General Rules In practice the following alterations are made in the form :—After the “(a)”
 1st Oct., 1874. the words “in the office of the official trustee” are inserted; the words in *italics*
 are omitted; and after the “(b)” the words “with the letters A to J respectively”
 are inserted.
 Schedule. Where the memorandum was returned with blanks and was otherwise
 FF. 37-39. improperly filled up through the solicitor’s carelessness, the examination was set
 aside and a new examination ordered, and the solicitor was ordered to pay the
 costs. *Re A. Chick*, Aug. 26th, 1885.

No. 37.

NOTICE OF MEETING TO BE HELD ON RESIGNATION
OF TRUSTEE.

Section 101. [E.F. No. 46. See s. 101 (2).]

In the matter of *A.B.*, of , an insolvent.

The committee of inspection hereby give you notice that a
 meeting of creditors will be held at on the
 day of , 18 , at
 o’clock in the noon, for the purpose of appointing a trustee
 in the place of the late trustee, who has resigned the office [*or who*
has died, or has become insolvent, or left the colony].

For the Committee,

To X.Y.

E.F.,
One of the said Committee.

No. 38.

MINUTES AT MEETING FOR RECEIVING RESIGNATION
OF TRUSTEE, &c.

Section 101, paragraph 2. [E.F. No. 47.]

In the matter of *A.B.*, of , an insolvent.

Minutes of proceedings had at a meeting of creditors of the said
 insolvent held at on the day of , 18 .

Chairman of the meeting, *E.F.*, of

We, the undersigned [*Here should follow similar resolutions to*
those appointing the late trustee, &c., at the first meeting].

E.F., Chairman of this meeting.

See form No. 25 for minutes of first meeting.

No. 39.

REPORT AND CERTIFICATE OF APPOINTMENT OF
TRUSTEE TO FILL A VACANCY CAUSED BY A
RESIGNATION.

Section 101, paragraph 2. [E.F. No. 48. See s. 94.]

In the matter of *A.B.*, of , an insolvent.

It is reported to the court as follows :—

1. That a meeting of creditors in this insolvency was held at
 on the day of at
 o’clock in the noon, for the purpose of receiving of
G.H. his resignation of the office of trustee and of ap-
 pointing a person to fill such office [*or for the purpose of*

- appointing a trustee in the room of *G.H.*, who is dead, General Rules
or who has been adjudged insolvent, or has left the colony]. 1st Oct., 1874.
2. That [the said *G.H.* resigned the office of trustee and] by Schedule
resolution at such meeting *N.O.*, of FF. 40-41.
appointed to fill the office of trustee of the property of
the insolvent.
3. That by another resolution it was declared that the said
N.O. should give security for the due performance of the
said office, by entering into a bond in the sum of
with two sufficient securities [or as the case may be].
F.K., Chairman.

No. 40.

NOTICE IN GAZETTE OF INTENDED DIVIDEND.

Rule 114. [E.F. No. 49. See s. 152.]

A dividend is intended to be declared in the matter of *A.B.*,
of , adjudicated insolvent on the day of 18 .
Creditors who have not proved their debts by the day
of 18 , will be excluded.
Dated this day of 18 .
G.H., Trustee.

No. 41.

APPLICATION BY CREDITOR FOR ORDER FOR TRUSTEE
TO PAY DIVIDEND AND ORDER THEREON.

Rule 118. [E.F. No. 50. See s. 158.]

In the matter of *A.B.*, of , an insolvent.
I, *F.K.*, of , make application to this court for an
order to be made upon the trustee to pay the dividend in this insol-
vency due to me, with interest thereon for the time it has been
withheld from me, that is to say, from the day of
18 , on which day I applied to the trustee for its payment to me,
and also to pay to me the costs of this application.
Dated this day of , 18 .
F.K.

Upon the reading of this application, and upon hearing the
trustee [and the creditor, where he has been required to attend and
has attended], it is ordered that the trustee do forthwith pay to the
said *F.K.*, the sum of pounds, the amount of such
dividend.

And it is further ordered that the trustee do pay to the said
creditor at the same time the sum of , for interest on such
dividend, being at the rate of £10 per cent. for the time that its pay-
ment has been withheld, together with a further sum of for
the costs of this application.

Given under the seal of the court, this day of
18 .

By the Court,

Registrar.

(If the court does not order payment, then, after the words "it is
ordered," insert the order made.)

General Rules

No. 42.

1st Oct., 1874.

REPORT OF TRUSTEE FOR CLOSING INSOLVENCY.

Schedule.

Section 166. [E.F. No. 51.]

FF. 42-44.

In the matter of *A.B.*, of , an insolvent.

I, *G.H.*, the trustee of the property of the insolvent, do hereby report to this court, as follows:—

That the whole of the property of the insolvent has been realised for the benefit of his creditors [and a dividend to the amount of shillings in the pound has been paid, as shown by the statement hereunto annexed];

[or That so much of the property of the insolvent as can, according to the joint opinion of myself and the committee of inspection, hereunto annexed in writing under our hands, be realised without needlessly protracting the insolvency, has been realised, as shown by the statement hereunto annexed, and a dividend to the amount of shillings has been paid];

[or That a composition [or arrangement] offered by the insolvent was duly accepted by me [or that a general scheme of settlement or arrangement of the affairs of the insolvent has been assented to by me], to which the approval of this court was given on the day of , 18].

Dated this day of , 18 .
G.H., Trustee.

No. 43.

ORDER ON REPORT OF TRUSTEE AS TO THE CLOSING OF AN INSOLVENCY.

Section 166. [E.F. No. 52.]

In the matter of *A.B.*, of , an insolvent.

Upon reading a report of the trustee of the property of the insolvent, dated the day of , 18 , reporting [*here set out the terms of the report*], and upon hearing [*here insert the name of any person who may appear to oppose an order for closing*], the court being satisfied that [*here follow the terms of the report*], doth order and declare that the insolvency of the said *A.B.* has closed [*or as the court may otherwise order*].

Given under the seal of the court, this day of 18 .

By the Court,

Registrar.

No. 44.

APPLICATION FOR DIRECTIONS BY TRUSTEE.

Section 127. Rule 95. [E.F. No. 53.]

In the matter of *A.B.*, of , an insolvent.

I desire to make application to the court for its directions [*here state the particular matter in relation to which they are sought*].
Trustee.

Let this application be heard on the day of at o'clock in the noon and let the trustee give notice to [*here insert the persons to whom it is to be given*].

Dated this day of 18 .
Registrar.

No. 45.
ORDER ON APPLICATION OF TRUSTEE FOR
DIRECTIONS.

General Rules
1st Oct., 1874.
Schedule.
FF. 45-47.

Section 127. Rule 96. [E.F. No. 54.]

In the matter of *A.B.*, of _____, an insolvent.
Whereas at a court held this day the trustee of the property of the insolvent applied to this court for its directions [*here state the particular matter in relation to which they are sought*]. Now upon hearing *C.D.*, of _____, on the matter it is ordered [*here set out the order*], and that the trustee do pay out of his own moneys [or out of the property of the insolvent] the sum of the costs of this order, and the sum of _____ to *C.D.* for his costs [or that *C.D.* do pay the sum of _____ the costs of this order and also the sum of _____ to *C.D.* for his costs].
Given under the seal of the court, this _____ day of

18

By the Court.

Registrar.

No. 46.
NOTICE IN GAZETTE AND LOCAL PAPER OF MEETING
TO AUTHORISE THE TRUSTEE TO ACCEPT A COM-
POSITION.

Section 134. [E.F. No. 55.]

A meeting of the creditors of *A.B.*, of _____, adjudicated insolvent on the _____ day of _____, 18 _____, will be held at _____, on the _____ day of _____ 18 _____ [*not less than 21 days from the date of advertisement*], at _____ o'clock in the _____ noon, for the purpose of considering the propriety of sanctioning the acceptance by the trustee of a composition offered by the insolvent of _____ [or the assent by the trustee to a scheme of settlement of the affairs of the insolvent], [and for the annulling thereafter of the order of adjudication made against the insolvent].

G.H., Trustee.

No. 47.

ORDER TO STAY PROCEEDINGS ON A COMPOSITION, &c.

Section 177, paragraph 11. [E.F. No. 56.]

In the matter of *A.B.*, of _____, an insolvent.
Upon the application of *H.D.*, of _____, it having been proved to the satisfaction of the court that the proceedings in this insolvency ought to be stayed, by reason that negotiations are pending for the liquidation of the affairs of the insolvent by arrangement [or for the acceptance of a composition by the creditors in satisfaction of the debts due to them from the insolvent], [*or, state any other reason that may have been proved to exist for the order*]: It is ordered that the proceedings in this insolvency be stayed until further order.

Given under the seal of the court, this _____ day of

18

By the Court,

Registrar

General Rules

No. 48.

1st Oct., 1874.

APPLICATION TO ANNUL ADJUDICATION UNDER
SECT. 39 OR 134.

Schedule.

[E.F. No. 57.]

FF. 48-50.

In the matter of *A.B.*, of _____, an insolvent.
 I, *R.S.*, of _____, being interested in this
 matter, do hereby make application to the court that the order of
 adjudication against the said insolvent be annulled [in accordance
 with the terms of a composition, the acceptance of which by the
 trustee of the property of the insolvent was sanctioned by special
 resolution at a meeting of creditors held on the _____ day
 of _____ at _____].

Dated this _____ day of _____

R.S.

No. 49.

ORDER ANNULLING ADJUDICATION UNDER SECT. 134.

[E.F. No. 58.]

In the matter of *A.B.*, of _____, an insolvent.
 Whereas at a meeting of creditors held under this insolvency
 on the _____ day of _____, pursuant to notice given in the
Gazette, it was resolved by a majority in number and three-fourths
 in value of the creditors then present or duly represented at the
 said meeting, that a composition offered by the insolvent for pay-
 ment of the debts owing by him was calculated to benefit the
 general body of the creditors under the estate, and should be
 accepted by the trustee of the property of the insolvent.

And whereas the court approving of the composition offered did
 testify such approval by the judge of this court signing the instru-
 ment containing the terms of the composition.

And whereas it was made a condition of the composition that
 the order of adjudication should be annulled; and whereas
 _____ hath applied to this court to annul the adjudication
 accordingly.

It is hereby ordered that the adjudication made against the said
 insolvent be and the same is hereby annulled. [*Add any directions
 as to vesting the property of the bankrupt.*]

Given under the seal of the court, this _____ day of _____
 18 _____.

By the Court,

Registrar.

No. 50.

NOTICE IN GAZETTE AND PAPER OF INSOLVENCY
HAVING BEEN ANNULLED.

Section 178. [E.F. No. 59.]

In the matter of *A.B.*, of _____, an insolvent.
 Whereas under an insolvency petition presented to this court
 against the said *A.B.*, an order of adjudication was made on the _____
 day of _____ 18 _____.

This is to give notice that the said adjudication was, by order
 of this court, annulled on the _____ day of _____
 18 _____.

Dated this _____ day of _____

18 _____
Registrar.

No. 51.

APPLICATION FOR RELEASE BY TRUSTEE AND
ORDER THEREON.

Rule 105. [E.F. No. 60. See s. 197.]

General Rules

1st Oct., 1874.

Schedule.

FF. 51-53.

In the matter of *A.B.*, of _____, an insolvent.
I, the trustee of the property of the said insolvent, do make
application to this court for my release as such trustee.

Dated this _____ day of _____ 18 ____.

G.H.
On the hearing of the above application it is ordered by the
court that the release of the said *G.H.* be granted, and it is hereby
granted accordingly, and the said *G.H.* is hereby removed from the
office of trustee of the property of the insolvent.

Given under the seal of the court, this _____ day of
18 ____.

By the court,

Registrar.

No. 52.

NOTICE IN GAZETTE OF DAY AN INSOLVENT WILL
APPLY FOR HIS CERTIFICATE.

Rule 121. [E.F. No. 61. See s. 167.]

On the _____ day of _____, 18 __, at
o'clock in the _____ noon, *A.B.*, of _____, adjudicated
insolvent on the _____ day of _____ 18 __, will apply
to [here state court], at _____, for a certificate of discharge.

Dated this _____ day of _____ 18 ____.

No. 53.

APPLICATION FOR CERTIFICATE.

Rule 121. [E.F. No. 64. See s. 167.]

In the matter of *A.B.*, of _____ an insolvent.
The insolvent having passed his last examination on the
day of _____ 18 __, [or the creditors of the said insolvent having at a
meeting held at _____, on the _____ day of _____ 18 __, passed a
special resolution, as shown by the minutes of proceedings had at
such meeting, duly signed by the chairman thereof, assenting to
the insolvent applying for a certificate, although he has not passed
his last examination], and the insolvent alleging that his insolvency
has arisen from circumstances for which he cannot justly be held
responsible [or, and the creditors of the said insolvent having, at a
meeting held at _____, on the _____ day of _____
18 __, passed a special resolution, as shown by the minutes of the
proceedings had at such meeting, duly signed by the chairman
thereof, to the effect that his insolvency has arisen from circum-
stances for which the insolvent cannot justly be held responsible,
and that they desire that his certificate of discharge should be
granted to him, or, and the gross amount realised in the estate
being equal to the total amount of debts proved in the estate, or,
and twelve months having elapsed from the date of adjudication,
and the insolvent having obtained the assent in writing of a majority
in number of the creditors, whose debts amount to £10 and upwards,

Schedule.
FF. 54-55.

Every application for a certificate requires a £1 stamp, see table II.

MEMORANDUM OF APPLICATION FOR CERTIFICATE.

The application of the said insolvent for his certificate of discharge having been read, and the court being satisfied that the insolvent is entitled to such certificate, doth hereby grant it. [If suspended or withheld alter the form accordingly, and state reasons for suspending or withholding.]

CERTIFICATE OF DISCHARGE.

In the matter of *A.B.*, of _____, an insolvent.

Whereas at a court held this _____ day of _____ 18____, the insolvent applied for his certificate of discharge; *and whereas it having been proved to the court that [*here recite as in the application*], a certificate of discharge is hereby granted.

[Or *And whereas it appears to the court, by sufficient evidence, that the insolvent has made default in giving up to his creditors the property which he is required by "*The Insolvency Act of 1874*" to give up [*or that a prosecution has been commenced against the insolvent in pursuance of the provisions relating to the punishment of fraudulent debtors contained in "The Insolvency Act of 1874," in respect of an offence alleged to have been committed by the insolvent against the said Act*]: it is ordered that the discharge of the insolvent be withheld altogether [*or suspended until _____ from the date of this order*].

Given under the seal of the court, this _____ day of _____ 18____.

By the court,

Registrar.

No. 56.

General Rules

NOTICE TO CREDITORS OF AN INSOLVENT, WHO HAS PAID AN ADDITIONAL SUM AFTER CLOSE OF HIS INSOLVENCY, MAKING UP 20s. IN THE POUND, THAT HE WILL APPLY FOR A CERTIFICATE OF DISCHARGE.

1st Oct., 1874.

Schedule.

FF. 56-59.

Section 176. [E.F. No. 48. See rr. 147-149.]

In the matter of *A.B.*, of _____, an insolvent.
To the creditors of the said insolvent.

Take notice that the insolvent will apply to this court on the day of 18, at _____ o'clock in the _____ noon, for a certificate of discharge on the ground that he has paid to his several creditors since the close of the insolvency a sum which, with the dividend of _____ paid, makes up twenty shillings in the pound on all the debts proved in this insolvency.

Dated this _____ day of 18 .

Registrar.

No 57.

NOTICE IN GAZETTE OF CERTIFICATE OF DISCHARGE.

Rule 122. [E.F. No. 69.]

In the matter of *A.B.*, of _____, an insolvent.
On the _____ day of _____ a certificate of discharge was granted to *A.B.*, of _____, who was adjudicated insolvent on the _____ day of 18 .

Registrar.

No. 58.

NOTICE IN GAZETTE AND LOCAL PAPER THAT A CREDITOR SEEKS TO ENFORCE PAYMENT OF HIS DEBT OUT OF THE PROPERTY OF AN UNDISCHARGED INSOLVENT.

Section 176. Rules 157 to 159. [E.F. No. 70.]

NOTICE.—The sanction of this court is sought for the enforcement against *A.B.*, adjudicated insolvent on the _____ day of 18, of the payment of the balance remaining unpaid of a debt proved under his insolvency. The insolvency was closed on the _____ day of 18. All persons who have become creditors of this insolvent since such day, and who may desire to show cause against the granting of the sanction sought, should attend at this court on the _____ day of 18, at _____ o'clock in the _____ noon.

Registrar.

No. 59.

SEARCH WARRANT.

Section 118. Rule 150. [E.F. No. 71.]

In the matter of *A.B.*, of _____, an insolvent.
Whereas by evidence duly taken upon oath it hath been made to appear to the court that there is reason to suspect and believe

General Rules that property of the said insolvent is concealed in the house [or other
1st Oct., 1874. place, describing it as the case may be] of one X.M., of ,
such house [or place] not belonging to the said insolvent.

Schedule.

FF. 60-61.

These are therefore to require you to enter in the daytime into
the house [or other place, describing it] of the said X.M., situate at
aforesaid, and there diligently to search for the said
property, and if any property of the said insolvent shall be there
found by you on such search, that you seize the same, to be disposed
of and dealt with according to the provisions of "*The Insolvency
Act of 1874.*"

Given under the seal of the court, this day of 18 .
Registrar.

To X.Y., officer of this court, and his assistant [or as the case
may be].

No. 60.

WARRANT OF SEIZURE.

Section 118. Rule 150. [E.F. No. 72.]

In the matter of A.B., of , an insolvent.

Whereas on the day of 18 , an order of
adjudication was made against the said insolvent: These are there-
fore to require you forthwith to enter into and upon the house and
houses, and other the premises of the said insolvent, and also in
all other place and places belonging to the said insolvent where any
of his goods and moneys are or are reputed to be; and there seize
all the ready money, jewels, plate, household stuff, goods, mer-
chandise, books of accounts, and all other things whatsoever,
belonging to the said insolvent, except his necessary wearing
apparel, bedding, and tools, as excepted by "*The Insolvency Act
of 1874*" in that behalf.

And that which you shall so seize you shall safely detain and
keep in your possession until you shall receive other orders in
writing for the disposal thereof from the trustee; and in case of
resistance or of not having the key or keys of any door or lock of
any premises belonging to the said insolvent, where any of his goods
are or are suspected to be, you shall break open or cause the same
to be broken open for the better execution of this warrant.

Given under the seal of the court, this day of 18 .
Registrar.

To X.Y., officer of this court, and to his assistants [or as the
case may be].

No. 61.

WARRANT AGAINST DEBTOR ABOUT TO QUIT THE COLONY, &c.

Sections 71 and 72, and Rule 151. [E.F. No. 73.]

In the matter of a debtor's summons or an insolvency
petition against A.B., of , [or in the matter
of A.B., of , an insolvent].

To X.Y., officer of this court [or as the case may be], and all
peace officers within the colony, and to the governor or keeper of
the [here insert the prison].

Whereas, by evidence taken upon oath, it hath been made to
appear to the satisfaction of the court that there is probable reason

to suspect and believe that the said *A.B.* is about to leave the colony [or quit his place of residence] with a view of avoiding payment of the debt for which the said summons has been granted [or service of this [or a] petition or of avoiding appealing to this [or a] petition or of avoiding examination in respect of his affairs, or delaying or embarrassing the proceedings in insolvency].

General Rules
1st Oct., 1874.

Schedule.

F. 62.

[Or that there is probable cause to suspect and believe that the said *A.B.* is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of by the trustees of the property of the insolvent [or that the said *A.B.* has concealed [or is about to conceal or destroy] his goods or chattels, or some of them, or his books, documents, or writings, or some or one of them, which books, documents, or writings, or some or one of them, may be of use to the creditors in the course of the insolvency of the said *A.B.*].

[Or whereas by evidence taken upon oath it hath been made to appear to the satisfaction of this court that the said *A.B.* has removed certain of his goods and chattels in his possession, above the value of five pounds, without the leave of the trustee, that is to say [here describe the goods or chattels].

[Or that the said *A.B.* did without good cause fail to attend at this court on the day of 18 , for the purpose of being examined, according to the requirements of an order of this court made on the day of 18 , directing him so to attend].

These are therefore to require you the said *X.Y.*, and others, to take the said *A.B.* and to deliver him to the governor or keeper of the above-named prison, and you the said governor or keeper to receive the said *A.B.*, and him safely to keep in the said prison until such time as this court may order.

Given under the seal of the court, this day of , 18 .
Registrar.

No. 62.

SUBPOENA (SUPREME COURT).

Rule 141. [E.F. No. 74. See ss. 10, 11, 73, 114.]

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To [name of witness] greeting:

We command you, that all things set aside, and ceasing every excuse, you be and appear in your proper person before the judge of the Supreme Court at [or district court at or police magistrate at] on the day of by of the clock in the noon of the same day [add where production of documents required, and also that you bring with you and produce at the time and place aforesaid, here describe shortly the deeds, papers, letters, &c., you require to be produced] to testify the truth according to your knowledge in the matter of a certain insolvency petition [or debtor's summons, or other matter] now in our Supreme Court aforesaid presented by *C.D.* against *A.B.* [or granted at the instance of *C.D.* against *A.B.*, or as the case may be] on the part of the said *C.D.* [or *A.B.*], at the aforesaid day in the said matter; and hereof fail not at your peril.

Given under the seal of our Supreme Court of Queensland, the day of 18 .

Registrar.

Every subpoena requires a 1s. stamp, see table II.

General Rules

No. 63.

1st Oct., 1874. SUMMONS UNDER SECT. 114 (IN A DISTRICT COURT).

Schedule.

Rule 141. [E.F. No. 76. See *ibid.*]

FF. 63-65.

In the matter of A.B., of , an insolvent.

To X.Y., of

You are hereby required to attend before the District Court at

[or police magistrate at], on the

day of in the noon, to give

evidence in the above matter, and then and there to have and produce [*state any particular documents required*]: hereof if you fail, having no lawful impediment to be then made known to the court and allowed by it, the court may by warrant cause you to be apprehended and brought up for examination.

Dated the day of 18 .
Registrar.

Every subpoena requires a 1s. stamp, see table II.

No. 64.

ORDER SETTING ASIDE PENSION, &c., UNDER SECT. 103.

Rule 154. [E.F. No. 77.]

In the matter of A.B., of , an insolvent.

Whereas it appears to the court that the said insolvent is [or has been, *here state what the insolvent is or has been*], and as such is in the enjoyment of the annual salary [or emoluments] of pounds [or pension, or compensation of] pounds granted by the [] ; and whereas upon the application of G.H., of , the trustee of the property of the insolvent, it appears to the court just and reasonable that the annual sum of pounds, portion of the said pension [or as the case may be], ought to be paid to the said trustee during the insolvency and after the close of the insolvency to the official trustee, in order that the same may be applied in payment of the debts of the said insolvent, and that such payment ought to be paid out of the first moneys which shall be due after the day of 18 , and be continued until this court shall make order to the contrary: It is ordered, subject to the consent of [*here insert the official title of the chief officer of the department under which the salary, emolument, pension, or compensation is enjoyed*], that such portion of the [*here insert pension, &c.*] shall be paid to the trustee accordingly.

Given under the seal of the court, this day of 18 .

By the Court, Registrar.

I consent to the above order.

Dated this day of 18 .

F.K.
[as the case may be.]

No. 65.

NOTICE TO INSOLVENT UNDER SECT. 104.

Rule 155. [E.F. No. 78.]

In the matter of A.B., of , an insolvent.

To A.B.

Take notice that I intend to apply to this court on the

day of 18 , at o'clock in the noon, for General Rules
 an order under section 104 of "*The Insolvency Act of 1874*," for 1st Oct., 1874.
 the payment of a part of your salary or income to me as trustee for
 the benefit of the creditors under your insolvency. Schedule.
 Dated this day of 18 FF. 66-68.
 G.H., Trustee.

No. 66.

ORDER SETTING ASIDE SALARY OR INCOME UNDER
 SECT. 104.

Rules 154 to 156. [E.F. No. 79.]

In the matter of A.B., of , an insolvent.
 Whereas it having been made to appear to this court that the
 insolvent is in the receipt of a salary [or income] of about
 pounds, as [here set forth the circumstances under which the salary
 or income is received]: And whereas upon the application of the
 trustee of the property of the insolvent, and upon hearing the
 insolvent, it appears to the court just and reasonable that the
 annual sum of pounds, portion of the said salary [or
 income] ought to be paid by the insolvent by monthly [or quarterly]
 payments [according as the insolvent receives his salary or income]
 to the trustee during the insolvency, and after the close of the
 insolvency to the official trustee, in order that the same may be
 applied in payment of the debts of the said insolvent, and that the
 first of such payments ought to be made by the insolvent on the
 day of 18 , and be continued monthly [or
 quarterly] until this court shall make order to the contrary; it is
 ordered that the said sum shall be paid by the insolvent in manner
 aforesaid out of his said salary [or income].

Given under the seal of the court, this day of 18
 By the Court, Registrar.

No. 67.

APPLICATION FOR ENFORCEMENT OF PROVISIONS IN
 A COMPOSITION.

Sections 134, 204. [E.F. No. 80.]

In the matter of a composition made by A.B., of .
 I, F.M., of , do apply to this court for an order for
 the enforcement of the provisions of the said composition against
 , on the grounds set forth in the annexed affidavit.
 Dated this day of 18 .
 F.M.

No. 68.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR EN-
 FORCEMENT OF PROVISIONS OF A COMPOSITION
 UNDER SECTS. 134 OR 204.

Sections 134, 204. [E.F. No. 81.]

In the matter of a composition made by A.B., of .
 I, F.M., of , make oath and say:—
 1. I am interested in the said composition, having proved
 my debt as a creditor of the said A.B. [or as the case
 may be].

General Rules	2. [One of] the provisions of the said composition is [or are]
1st Oct., 1874.	that [<i>here set it or them out</i>].
Schedule.	3. has failed to comply with the said provisions
FF. 69-71.	[<i>or as the case may be</i>].
	Sworn at, &c.

F.M.

No. 69.

ORDER FOR ENFORCEMENT OF PROVISIONS IN A COMPOSITION.

Sections 134, 204. [E.F. No. 82.]

In the matter of a composition made by A.B., of
 Upon hearing the application of F.M., of , a person
 interested in the said composition, and reading the affidavit of
 [*here insert evidence*], the court being of opinion that the provisions
 of the said composition mentioned in the said affidavit should be
 enforced, it is ordered that [*here insert order*].

Given under the seal of the court, this day of 18 .

By the Court,

Registrar.

To

Take notice that unless you obey the directions contained in
 this order you will be deemed to have committed a contempt of
 court.

No. 70.

APPLICATION BY TRUSTEE FOR COMMITTAL OF INSOLVENT OR OTHER PERSON.

Sections 111 and 122. Rule 152. [E.F. No. 83.]

In the matter of A.B., of , an insolvent.

I, the trustee of the property of the said insolvent [*or as the
 case may be*], do apply to this court for an order of committal for
 contempt of this court against the said insolvent [*or L.M.*],
 on the ground set forth in the annexed affidavit.

Dated this day of 18 .

G.H., Trustee.

No. 71.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR COMMITTAL OF INSOLVENT FOR CONTEMPT UNDER SECT. 122.

Rule 152. [E.F. No. 84.]

In the matter of A.B., of , an insolvent.

I, G.H., the trustee of the property of the said insolvent,
 make oath and say:—

[WHERE INSOLVENT FAILS TO PRODUCE STATEMENT OF AFFAIRS.]

1. The said insolvent did wilfully fail to produce to me the
 statement of his affairs, the production of such statement
 being a duty imposed upon him by the one hundred and
 twenty-second section of "*The Insolvency Act of 1874*,"
 and by the Rules of Court.

[WHERE INSOLVENT DOES NOT SUBMIT TO EXAMINATION.]

[Or 1. The said insolvent did attend at a meeting of his

General Rules

1st Oct., 1874.

Schedule.

FF. 73-75.

or power as [here set out the capacity in which the person stands to the insolvent] certain moneys [and securities] belonging to the insolvent, that is to say [here set out and describe the particular moneys and securities].

2. On the _____ day of _____, 18____, I did apply personally to the said *L.M.* to pay and deliver to me the said moneys and securities, and he did not then, nor has he since paid or delivered to me the same [or I, on the _____ day of _____, posted a letter to the said *L.M.*, addressed to him at _____ calling upon him to, &c., and on the _____ day of _____, 18____, I posted another letter, by which I again called upon him to, &c., and he has failed to pay and deliver the same].
3. I firmly believe that the said *L.M.* is not entitled by law to retain such moneys [and securities] as against the insolvent, or against me as the trustee of the property of the insolvent.

Sworn at, &c.

G.H.

No. 73.

AFFIDAVIT OF PERSON INTERESTED IN A COMPOSITION FOR COMMITTAL.

Sections 134, 204. [E.F. No. 86.]

In the matter of a composition made by *A.B.*, ofI, *F.M.*, of _____, make oath and say:—

1. *C.D.*, of _____, was by an order of this court made on the _____ day of _____, 18____, ordered to [here set out the order].

2. A copy of the said order was duly served on the said

3. The said *C.D.*, of _____, has failed to obey such order.

Sworn at, &c.

F.M.

No. 74.

NOTICE OF APPLICATION FOR COMMITTAL UNDER

SECT. 122.

[E.F. No. 87.]

In the matter of *A.B.*, of _____, an insolvent.

To the said insolvent.

Take notice that the trustee of the property of the said insolvent will on the _____ day of _____, 18____, at o'clock in the _____ noon, apply to this court for an order for your committal to prison for contempt of this court, you having failed to perform the duty imposed on you by the one hundred and twenty-second section of "*The Insolvency Act of 1874*" [here set out the duty he has failed to perform].

And further take notice that you are required to attend the court on such day, at the hour before stated, to show cause why an order for your committal should not be made.

Dated this _____ day of _____, 18____.

Registrar.

No. 75.

NOTICE OF APPLICATION FOR COMMITTAL UNDER

SECT. 111.

[E.F. No. 88.]

In the matter of *A.B.*, of _____, an insolvent.

To [here insert name, address and addition of the person to whom the notice is to be sent].

General Rules
1st Oct., 1874.

Take notice that the trustee of the property of the said insolvent will on the day of 18 , at o'clock in the noon, apply to this court for an order for your committal to prison for contempt of this court, you having failed to pay and deliver to him certain moneys [and securities] belonging to the insolvent in your possession or power as [here state whether as banker, &c.], that is to say [here set out and describe the particular moneys and securities]. And further take notice that you are required to attend the court on such day, at the hour before stated, to show cause why an order for your committal should not be made.

Schedule.
FF. 76-78.

Dated this day of 18 .

Registrar.

No. 76.

NOTICE OF APPLICATION FOR COMMITTAL UNDER
SECTS. 134, 204.

[E.F. No. 89.]

In the matter of a composition made by A.B., of

To

Take notice that C.D., of , will on the day of , 18 , at o'clock in the noon, apply to this court for an order for your committal to prison for contempt of this court, you having disobeyed the order of this court made on the day of 18 , [here set out order]. And further take notice that you are required to attend the court on such day, at the hour before stated, to show cause why an order for your committal should not be made.

Dated this day of 18 .

Registrar.

No. 77.

ORDER OF COMMITTAL UNDER SECT. 122.

[E.F. No. 90.]

In the matter of A.B., of , an insolvent.

Upon the application of the trustee of the property of the insolvent, and upon hearing the insolvent [or, if he does not appear, reading the affidavit of] [here insert name and addition of person by whom the notice to show cause was served] and upon reading the affidavit of [enter evidence], the court being of opinion that the insolvent has been guilty of contempt of this court by having failed to [here follow the notice]: It is ordered that the said insolvent do stand committed to [here insert prison] for his said contempt.

Given under the seal of the court, this day of 18 .

By the Court,

Registrar.

No. 78.

ORDER OF COMMITTAL UNDER SECT. 111.

[E.F. No. 91.]

In the matter of A.B., of , an insolvent.

General Rules Upon the application of the trustee of the property of the insolvent, and upon hearing *L.M.* [or if *L.M.* does not appear, reading the affidavit of] [here insert name and description of person by whom the notice to show cause was served], and upon reading the affidavit of [enter evidence], the court being of opinion that *L.M.* has been guilty of contempt of this court by having failed to pay and deliver to the said trustee certain moneys [and securities] [here follow the notice]: It is ordered that the said *L.M.* do stand committed to [here insert prison] for his said contempt.

1st Oct, 1874.

Schedule.

FF. 79-80.

Given under the seal of the court, this day of
18 .

By the Court,

Registrar.

No. 79.

ORDER OF COMMITTAL UNDER SECTS. 134 OR 204.

[E.F. No. 92.]

In the matter of *A.B.*, of , an insolvent [or where insolvency annulled or proceeding under sect. 204, In the matter of a composition made by *A.B.*, of]
].

Whereas by an order of this court made on the day of , 18 [here recite the order]. Now upon the application of *C.D.*, of , and upon hearing *A.B.* [or as the case may be] [or if he does not appear, reading the affidavit of] [here insert name and addition of person by whom the order was served on *A.B.*] and upon reading the affidavit of [enter evidence], the court being of opinion that the said *A.B.* has been guilty of a contempt of this court by his disobedience of the said order: It is ordered that the said *A.B.* do stand committed to [here insert prison] for his said contempt.

Given under the seal of the court, this day of
18 .

By the Court,

Registrar.

No. 80.

WARRANT OF COMMITTAL FOR CONTEMPT.

Sections 111, 122, 134, 204. [E.F. No. 93.]

In the matter of *A.B.*, of , an insolvent [or in the matter of a composition made by *A.B.*]

To *X.Y.*, officer of this court [or as the case may be], and to all peace officers within the colony and to the governor or keeper of the [here insert the prison].

Whereas by an order of this court bearing date the day of , 18 , it was ordered that the said insolvent [or *L.M.*, of] should stand committed for contempt of this court.

These are therefore to require you the said *X.Y.* [or as the case may be], and others, to take the said *A.B.* [or *L.M.*] and to deliver him to the governor or keeper of the above-named prison, and you

the said governor or keeper to receive the said *A.B.*, and him safely General Rules
to keep in the said prison until such time as this court shall order. 1st Oct., 1874.

Given under the seal of the court this day of 18 Schedule.
By the Court,

Registrar. FF. 81-83.

No. 81.

ORDER FOR DISCHARGE FROM CUSTODY ON
CONTEMPT.

[E.F. No. 94.]

In the matter of *A.B.*, of , an insolvent [or
as the case may be].

Upon application made this day of for *A.B.*,
who was committed to prison for contempt by order of this court,
dated the day of 18 , and upon reading his
affidavit showing that he has cleared [or is desirous of clearing] his
contempt and has paid the costs occasioned thereby, and upon
hearing the trustee [or *C.D.* of], it is ordered that the
governor or keeper of [here insert name of prison] do discharge the
said *A.B.* out of his custody, as to the said contempt.

Given under the seal of the court this day of 18 .
By the Court,

Registrar.

No. 82.

WARRANT TO APPREHEND A PERSON SUMMONED
UNDER SECT. 114.

[E.F. No. 95.]

In the matter of *A.B.*, of , an insolvent.
To *X.Y.*, officer of this court [or as the case may be].

Whereas by summons [or subpoena] dated the day of
 , 18 , and directed to the said *A.B.* [or to *F.M.*, of
], he was required personally to be and appear on
the day of instant, at o'clock in the
noon at this court [or as the case may be] to be examined;
and which said summons [or subpoena] was afterwards, on the
day of 18 , as hath been proved upon oath,
duly served upon the said , and a reasonable sum was
tendered him for his expenses. And whereas the said
having no lawful impediment made known to or allowed by this
court, did not appear as by the said summons [or subpoena] he was
required, but therein has wholly made default: These are therefore
to will, require, and authorise you and every of you to whom this
warrant is directed, immediately upon receipt thereof, to take the
said and bring him before this court [or as the case may
be] on the day of in order to his being examined
as aforesaid, and for your so doing this shall be your sufficient
warrant.

Given under the seal of the court, this day of 18 .

By the Court,
Registrar [or P.M.]

No. 83.

ORDER TO POSTMASTER-GENERAL.

Section 121. [E.F. No. 96.]

In the matter of *A.B.*, of , an insolvent.

General Rules Upon the application of *G.H.*, of _____, the trustee
1st Oct., 1874 of the property of the above insolvent, it is ordered that for a
Schedule. period of three months from [here insert the date of the order of
FF. 84-85. adjudication] all post letters directed or addressed to the said
 insolvent at [here insert only the place or places of which the insolvent
 is described in such order of adjudication] shall be re-directed, sent,
 or delivered by the Postmaster-General or officers acting under him
 to the said trustee at _____, and that a sealed duplicate of this
 order be forthwith transmitted by the trustee to the Postmaster-
 General, or officers acting under him.

By the Court,

Registrar.

No. 84.

REGISTER OF INSOLVENCIES.

Rule 172. (E.F. No. 101.)

	Name of Insolvent.
	Residence.
	Description.
	Petitioning Creditor, and Description.
	Attorney.
	Date of Adjudication.
	Day for first Meeting.
	Date of Appointment, and Name and Address of Trustee.
	Day for last Examination of Insolvent.
	Date of Annuling Adjudication, and Reason.
	Dividend, Amount, and Date.
	Close of Insolvency.
	Application for Certificate.
	Date of Certificate, and Why Granted.

No. 85.

INSOLVENCY BOOK (TO BE KEPT BY REGISTRARS).

Rule 175. [E.F. No. 102.]

	Name of Insolvent.
	Residence and Description.
	Petitioning Creditor, and Description.
	Attorney.
	Date of Adjudication.
	Act of Insolvency Committed.
	Official Trustee.
	When Advertised.
	First Meeting.
	Trustee.
	Dividend.
	Proceedings, Consolidated, Impounded, or Transferred (as the case may be).
	When Annulled.
	Close of Insolvency.
	Date of Certificate.

SCHEDULE OF FORMS.

257

DEBTOR'S SUMMONS BOOK.

[E.F. No. 103.]

General Rules

1st Oct., 1874.

Schedule.

F. 86.

Debtor.	Creditor.	When Filed.	Attorney.	Result of Summons.

No. 86.

ESTATE BOOK.

Rule 178. [E.F. No. 104.]

(Pro Forma.)

Dates.	Receipts or Payments.	State of Bank Account.	State of Trustee's Account.
1875.		£ s. d.	£ s. d.
Mar. 14	Dr. Received cash on insolvent's desk ..	..	5 0 0
"	" Received balance on insolvent's deposit account ..	..	89 14 6
			£44 14 6
"	Cr. Paid into bank account ..	40 0 0	40 0 0
			£4 14 6
" 20	Dr. Received arrears of rent due by Jas. Johnston .. £25 0 0		
"	" Half-year's rent to Christmas from do. .. 17 10 0		
"	" Do. from Wm. George, for shop .. 27 10 0		
"	" Do. from John Williams, for cellar .. 5 0 0		
		..	75 0 0
"	Cr. Paid into bank ..	75 0 0	£79 14 6
			75 0 0
		£115 0 0	£4 14 6
" 30	Dr. Received from James Stockwell debt due by him .. £75 16 8		
"	" Received from William Jones do. .. 5 2 6		
	£80 19 2	..	80 19 2
"	Cr. Paid into bank ..	80 0 0	£85 13 8
			80 0 0
		£195 0 0	£5 13 8
" 31	Dr. Received proceeds of household furniture, sold by A. Martin, auctioneer ..		150 8 4
		£195 0 0	£156 2 0
"	Cr. Paid into bank ..	150 8 4	150 8 4
		£345 8 4	£5 13 8
April 8	Dr. Received dividends on gas shares payable at Lady Day, 1875 .. £3 0 0		
"	" Price of gas shares sold .. 126 0 0		
		..	129 0 0
			£134 13 8

General Rules

No. 86.—ESTATE BOOK.—*Continued.*

1st Oct., 1874.

(Pro Forma.)

Schedule.

F. 87.

	Dates.	Receipts or Payments.	State of Bank Account.	State of Trustee's Account.
1875.			£ s. d.	£ s. d.
April	3	Brought forward	345 8 4	134 13 8
		Cr. Paid into bank	126 0 0	126 0 0
				£8 13 8
	16	Dr. Received from Thomas Thomson amount of debt due by him ..	..	8 2 4
				£16 16 0
		Cr. Paid into bank	15 0 0	15 0 0
			£486 8 4	£1 16 0
	30	Dr. Received per draft on bank account ..	20 0 0	20 0 0
			£486 8 4	£21 16 0
		Cr. Paid to account of allowance to insolvent ..	..	20 0 0
				£1 16 0
May	2	Dr. Received per draft on bank account ..	10 0 0	10 0 0
			£456 8 4	£11 16 0
		Cr. Paid rates and taxes	..	9 6 0
			£456 8 4	£2 10 0
June	1	Dr. Received per draft on bank account ..	30 0 0	30 0 0
			£426 8 4	£32 10 0
		Cr. Paid allowance to insolvent £13 12 0		
		„ Law expenses and miscellaneous charges .. 16 12 0		
			..	30 4 0
Balance in bank at 14 June, 1875 (<i>date of audit</i>), exclusive of interest from commencement of account, to be ascertained at the end of the year			426 8 4	
Balance in the trustee's hands at 14 June, 1875			..	£2 6 0
Add balance in bank as above			..	426 8 4
Total balance of assets realised in favour of the estate, as at 14 June, 1875			..	£428 14 4

(Signed)

G.H., Trustee.

No. 87.

ANNUAL RETURN TO BE MADE BY TRUSTEES.

Section 188. Rule 185. [E.F. No. 105.]

	Name of Insolvent.	—
	Residence and Description.	—
	Date of Adjudication.	—
	Name and Addition of the Trustee.	—

No. 87.—Continued.

General Rules
1st Oct., 1874.
Schedule.
F. 88.

ANNUAL RETURN TO BE MADE BY TRUSTEES.

	Names and Additions of the Committee of Inspection.	5.
	Amount of Assets in the Insolvent's Statement.	6.
	Amount of Assets on Trustee's Estimate.	7.
	Amount of Liabilities.	8.
	Amount of Receipts.	9.
	Amount of Allowance Paid to Insolvent, if any.	10.
	If Insolvency Annulled on Acceptance of Composition or Scheme of Settlement, Terms of Composition or Scheme to be shortly stated.	11.
	Amount of Dividends Declared.	12.
	Date of the Close of the Insolvency.	13.
	Date of the Discharge of the Insolvent.	14.
	Amount of Dividends Unclaimed.	15.
	Trustee's Remuneration.	16. Amount of Expenses Incurred and Paid under the following heads.
	Law Charges Paid as Taxed, including all Court Fees.	
	Incidental Outlay.	
	Extraordinary Outlay, such as Rents and Wages Incurred in Management after Insolvency, or for Materials required to Complete Contracts, &c.	

Note.—The amount of the payments included in columns 10, 12, and 16, when set against the receipts in column 9, ought to bring out the balance of the trustee's last audited account.

No. 88.

PETITION UNDER SECTIONS 202, 204.

Rule 187. [E.F. No. 106.]

The humble petition of A.B., of , &c.
Showeth,

That your petitioner alleges that he is unable to pay his debts,

General Rules and is desirous of instituting proceedings for liquidation of his affairs
1st Oct., 1874. by arrangement or composition with his creditors, and hereby
Schedule. submits to the jurisdiction of this court in the matter of such pro-
FF. 89-90. ceedings.

Your petitioner therefore prays that notices convening such
general meeting or meetings of his creditors as may be
necessary to be given by him during the course of such
proceedings may be sent in the prescribed manner, and
that such resolution or resolutions as his creditors may
lawfully pass in the course of such proceedings, and as
may require registration, may be duly registered by the
registrar of the court.

And your petitioner shall ever pray, &c.

Signed by the petitioner, A.B., on the day of A.B.
18 ,
in the presence of

Registrar
or
Attorney. (Address.)

If the petition be by partners alter the form accordingly.

See Rule 196 as to stating estimated amount of debts in petition.
Every petition under s. 202 or 204 requires a £2 stamp, see table II.
Every petition must be dated the day on which it is signed. Reg. Gen., 17th
August, 1877, r. 6, post.

No. 89.

AFFIDAVIT IN SUPPORT OF PETITION UNDER SECTIONS 202, 204.

Rule 187. [E.F. No. 107.]

I, A.B., of , make oath and say, as follows :—
I am the [or one of the] petitioner [or petitioners] named in the
petition hereunto annexed.

I verily believe that it will be most convenient to the creditors
whose debts exceed ten pounds, that the general meeting should be
held at

Sworn at A.B.

(Where an attorney is employed, add the following certificate.)

I certify my belief that it will be most convenient to the
creditors of the petitioner that the general meeting should be held
at [as above].

C.D.,

Attorney in the matter of the petition.

Every affidavit other than proof of debts requires a 1s. stamp, see table II.

No. 90.

NOTICE TO CREDITORS OF GENERAL MEETING.

Sections 202, 204. Rules 189, 191. [E.F. No. 108.]

In the matter of proceedings for liquidation by arrange-
ment or composition with creditors instituted by A.B.,
of , of [description as in petition].

A general meeting of the creditors of the above-named person
[or persons] is hereby summoned to be held at [here insert name of

town, and street or place] on the day of General Rules
 , instant [or next], at o'clock in the 1st Oct., 1874.
 noon precisely. The sections of "The Insolvency Act, 1874," under
 which the proceedings are instituted provide as follows:— Schedule.
 [Here extract from clause 202, subsections 1 and 5, and the first F. 91.
 two paragraphs of sect. 204.]

A form of proof and proxy will be found on the third side of this notice.

Dated the day of 18 .
 (Signed) A.B. [Debtor],
 or
 C.D. [adding address.]
 Attorney for the said debtor.

In case of partnership the notice must be signed by one of the partners in the partnership name, or by all the partners, or by an attorney or attorneys on their behalf.

No. 91.

AFFIDAVIT OF DEBT TO BE ANNEXED TO THE NOTICE
 SUMMONING FIRST GENERAL MEETING.

Rules 189, 191. [E.F. No. 109.]

In the matter of proceedings for liquidation by arrangement
 or composition with creditors instituted by A.B., of
 &c.

I, of , make oath and say as follows:—

The said A.B. was at the date of the institution of the said
 proceedings and still is justly and truly indebted to me in the sum
 of for [state consideration], for which said sum or any
 part thereof I say that I have not, nor hath any person by my order
 or to my knowledge or belief, for my use had or received any manner
 of satisfaction or security whatsoever, save and except the follow-
 ing:—

[Here set out security, or if bills be held, specify them in the schedule.]

Date.	Drawn.	Acceptor.	Amount.	Due Date.

Sworn at

I appoint C.D., of &c., my proxy in the above matter.

E.F. [or G.H. and Co., in partnership name.]

General Rules
1st Oct., 1874.
Schedule.
FF. 92-94.

No. 92.

REQUEST WITH LIST OF CREDITORS.

Rule 190. [E.F. No. 110.]

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by [*insert name; the address need not be inserted*].

To the Registrar.

I [*or we*] request that the notices of the general meeting on the day of 18 , herewith delivered to you, duly addressed and stamped for post, may be sent to the under-scheduled creditors.
Dated this day of 18 .

[*To be signed by the debtor or one of the debtors or his or their attorney.*]



No.	Names of Creditors or Firms of Creditors.	Addresses.	Estimated Amount of Debt.

The stamp duty is 3d. for each notice required to be sent; see table II, and r. 190.

No. 93.

NOTICE FOR GAZETTE.

Rule 191. [E.F. No. 111.]

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by *A.B.*, of

Notice is hereby given that a first [*or second, as the case may be*] general meeting of the creditors of the above-named person or persons has been summoned to be held at , on the day of at o'clock in the noon precisely.

Dated this day of 18 .

*A.B.**or**C.D.* (Attorney for the said *A.B.*).

No. 94.

ORDER CHANGING PLACE OF MEETING.

Rule 193. [E.F. No. 112.]

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by , of &c. [*following description as in petition.*]

Upon sufficient cause this day shown to the satisfaction of General Rules
the court, the general meeting of creditors in this matter summoned
for the day of , is hereby 1st Oct., 1874.
directed to be held at , in lieu of the place originally Schedule.
named. And hereof let notice be given forthwith. FF. 95-96.
Dated this day of 18 .
Registrar.

No. 95.

NOMINATION OF RECEIVER OR MANAGER BY
CREDITORS.

Rule 196. [E.F. No. 113.]

In the matter of proceedings for liquidation by arrangement
or composition with creditors instituted by A.B., of &c.
We, the undersigned, being a majority in value of the credi-
tors of the said A.B., do hereby nominate and appoint Mr.
, of , to be receiver [or manager] of the
effects [and business] of the said A.B., pending the resolution to be
come to by the creditors under the said proceedings.
Dated this day of 18 .

Witnesses' Names and Addresses.	Creditors' Signatures.	Amount of Debt.		

No. 96.

LIST OF CREDITORS ASSEMBLED, TO BE USED AT EVERY
GENERAL MEETING UNDER SECTS. 202 AND 204.

[E.F. No. 114.]

In the matter of
General meeting, held at this
day of 18 .

No. of Assents of Creditors, whose Debts Exceed £10.	Number.	Names of Creditors Assembled.	Amount of Assent.			Amount of Proof.		
1	1							
	2							
1	3							
1	4							
	5							
1	6							
1	7							
	7	Total number of credi- tors assembled.						
6		Total number of assents.						
		Totals .. £						

General Rules

No. 97.

1st Oct., 1874.

Schedule.

FF. 97-98.

RESOLUTION AT FIRST GENERAL MEETING WHERE
LIQUIDATION BY ARRANGEMENT RESOLVED ON.

Rule 209. [E.F. No. 115.]

In the matter of proceedings for liquidation by arrangement or composition with the creditors instituted by A.B., of &c.

We, the undersigned, being the statutory majority of creditors, assembled at the general meeting in the above matter, duly held at , this day of , 18 , in accordance with the provisions of "*The Insolvency Act of 1874*," do hereby resolve as follows:—

- (1) That the affairs of the said shall be liquidated by arrangement and not in insolvency.
- (2) That be and he is hereby appointed trustee.
- (3) That be and they are hereby appointed a committee of inspection. [*Or, in lieu of 2 and 3, the following:—That a subsequent meeting be held at on at o'clock a.m. (or p.m.) precisely, for the appointment of a trustee with or without a committee of inspection.*]
- (4) That be intrusted with the registration of this special resolution.

[*Here follow signatures of creditors.*]

F.K., Chairman.

Case.

Resolutions signed only by the chairman directed to be filed.—*Re A. Ross*.
July, 7th, 1875.

No. 98.

RESOLUTION AT FIRST GENERAL MEETING WHERE
COMPOSITION RESOLVED ON.

Rule 209. [E.F. No. 116.]

In the matter of proceedings for or towards the liquidation by arrangement or composition with creditors instituted by A.B., of , &c.

We, the undersigned, being a statutory majority of creditors assembled at the first meeting in the above matter, duly held at , this day of , 18 , in accordance with the provisions of the said Act, do hereby resolve as follows:—

1. That a composition of in the pound shall be accepted in satisfaction of the debts due to the creditors from the said A.B.
2. That such composition be payable as follows [*here state whether the same is to be payable in one payment or by instalments, and at what date from the second meeting*].
3. That the security of C.D. be accepted for the said composition [*or the instalment thereof*] or that the said composition [*or the instalments thereof*] be secured to the satisfaction of E.F. and G.H.
4. That I.K. be appointed trustee in the matter.

[*Here follow signatures of creditors.*]

F.K., Chairman.

No. 99.

General Rules

1st Oct., 1874.

NOTICE CONVENING SECOND GENERAL MEETING.

Schedule.

FF. 99-100.

Rule 216. [E.F. No. 117.]

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by *A.B.*, of &c

A second general meeting of the creditors of the above-named person [or persons] is hereby summoned to be held at on the day of instant [or next], at o'clock in the noon precisely. A majority in number and value of the creditors then assembled may confirm the resolution come to at the first general meeting, or a majority in number representing three-fourths in value of such creditors may by resolution declare that the affairs of the above-named person [or persons] may be liquidated by arrangement and not in insolvency.

Dated the day of , 18 .

(Signed) *A.B.* [Debtor],

or

C.D. [adding address].
Attorney for the said debtor.

No. 100.

RESOLUTION AT SECOND GENERAL MEETING.

Rule 217. [E.F. No. 118.]

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by *A.B.*, of &c.

We, the undersigned, being the statutory majority of creditors assembled at the second meeting in the above matter, duly held at , this day of , 18 , in accordance with the provisions of the said Act, do hereby confirm the resolution passed by the statutory majority of the creditors of the said *A.B.* assembled at the first meeting [or do hereby resolve that the affairs of the said *A.B.* be liquidated by arrangement and not in insolvency].

[And following on as in the form provided for resolution at the first general meeting where liquidation by arrangement is resolved on.]
[Here follow signatures of creditors.]

F.K., Chairman.

For form of resolution at first meeting when liquidation by arrangement is resolved on, see No. 97.

Given under my hand and the seal of the court, this
day of 18 . Schedule.

Registrar. FF. 104-106.

RESOLUTION FOR DEBTOR'S DISCHARGE.

In the matter of a special resolution for liquidation by arrangement of the affairs of A.B., of &c.

That the discharge of the said *A.B.* be and the same is hereby granted.

That the close of this liquidation shall take place on and from
the day of 18 .

That G.H., the trustee, be released on and from the day of 18 .

REPORT OF TRUSTEE AS TO DEBTOR'S DISCHARGE.

In the matter of a special resolution for liquidation by arrangement of the affairs of A.B., of &c.

Dated this day of 18 .

To the Registrar.

Trustee.

DEBTOR'S DISCHARGE.

In the matter of a special resolution for liquidation by arrangement of the affairs of A.B., of &c.

I do therefore hereby certify such discharge, in pursuance of the statute in that behalf.

Given under my hand and the seal of the court, this
day of 18 .

Registrar.

General Rules

1st Oct., 1874.

Schedule.

FF. 107-109.

No. 107.

NOTICE TO CREDITORS TO COME IN AND PROVE
THEIR DEBTS.

Rule 246. [E.F. No. 125.]

In the matter of &c.

The creditors of the above-named *A.B.*, who have not already proved their debts, are required on or before the _____ day of _____ to send their names and addresses and the particulars of their debts or claims to me, the undersigned _____ of _____, the trustee under the liquidation, or in default thereof they will be excluded from the benefit of the dividend proposed to be declared.

Dated this _____ day of _____ 18 ____ .
Trustee.

No. 108.

NOTICE TO CLAIMANT OF TRUSTEE'S REJECTION OF
HIS CLAIM.

Rule 247. [E.F. No. 126.]

In the matter of &c.

Take notice, that I, the undersigned trustee under this liquidation, do hereby reject your claim against the estate [or to the extent of £ _____, part of your claim], and that I intend to exclude you from dividend in respect thereof. And further take notice that such exclusion will be final, unless within *thirty* days you apply to the court to prove your debt, and proceed with such application with due diligence.

Dated this _____ day of _____ 18 ____ .
Yours, &c. _____ Trustee.

Name,
Address,

Where the creditor is resident beyond the limits of the colony, such length of notice is to be given to him as the court directs, see r. 247.

No. 109.

WRIT OF *FIERI FACIAS* ON AN ORDER FOR PAYMENT
OF DEBT APPEARING ON EXAMINATION IN COURT
TO BE DUE TO THE ESTATE OF AN INSOLVENT.

Section 117. [E.F. No. 129.]

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the Sheriff of Queensland [or other officer] greeting:

Whereas by an order of the court [naming it], dated the _____ day of _____ in the year of our Lord 18 ____ , and made in the matter of [insert the title of the order], reciting that *C.D.*, of _____ in his examination taken the _____ day of _____ and signed and subscribed by him, appeared to be indebted to the said insolvent in the sum of £ _____ upon the balance of account between the said *C.D.* and the said insolvent, it was ordered that the said *C.D.* should pay to *A.B.*, the trustee of the estate of the said insolvent, in full discharge of the said sum the sum of £ _____ forthwith [make this conformable to the order]: And whereas we are given to understand that the said sum of £ _____ [or that the sum of £ _____ part of the said sum of £ _____] is still unpaid:

Now we command you that of the goods and chattels, lands, tenements, and hereditaments of the said *C.D.* in your bailiwick you cause to be made the said sum of £ [insert the sum to be levied, &c., proceed as in a writ of *fi. fa.* at common law].
 Given under the seal of the court, this day of 18 . FF. 110-111.
 Registrar.

General Rules
 1st Oct., 1874.
 Schedule.

No. 110.

WRIT OF *FIERI FACIAS* ON AN ORDER FOR PAYMENT BY INSTALMENTS OF DEBT APPEARING ON EXAMINATION IN COURT TO BE DUE TO THE ESTATE OF AN INSOLVENT.

Section 117. [E.F. No. 130.]

Victoria, &c. :

Whereas by an order of the court [naming it], dated the day of in the year of our Lord 18 , made in the matter of [insert the title of the order], reciting that *C.D.*, of , in his examination taken the day of , and signed and subscribed by the said *C.D.* [or as the case may be], appeared to be indebted to the said insolvent in the sum of £ upon the balance of accounts between the said *C.D.* and the said insolvent, it was ordered that the said *C.D.* should pay to *A.B.*, the trustee of the estate of the said insolvent, in full discharge of the said sum of £ , the sum of £ in manner following, that is to say, by instalments of £ each, the first whereof was to be made on the day of , and it was ordered that in default of payment of any of the said instalments the whole sum then remaining unpaid should immediately become payable and be paid : And whereas we are given to understand that default was made in payment of one of the said instalments, and thereupon the said sum of £ which then remained unpaid [or the sum of £ , being the portion of the sum so ordered to be paid which then remained unpaid, according to the facts] immediately became payable, but the same has not been paid : Therefore we command you, &c. [proceeding as in the former form].

No. 111.

WRIT OF *FIERI FACIAS* ON AN ORDER FOR PAYMENT OF DEBTS APPEARING ON EXAMINATION IN COURT TO BE DUE TO THE ESTATE OF AN INSOLVENT, AND COSTS ASSESSED BY THE COURT.

Section 117. [E.F. 131.]

Victoria, by the grace of God [as in the forms given above, reciting the order, including the portion of it relating to costs].

And whereas we are given to understand that the said sums of £ and of £ [the costs] are still unpaid [make this agree with the facts] : Now we command you, &c. [proceed as in the above forms, with the necessary variations].

General Rules

No. 112.

1st Oct., 1874. WRIT OF *FIERI FACIAS* ON AN ORDER FOR PAYMENT
Schedule. OF COSTS TO BE TAXED.

FF. 112-115.

Section 21. [E.F. No. 132.]

Victoria, &c. :

We command you that of the goods and chattels, lands, tenements, and hereditaments of *C.D.* in your bailiwick you cause to be made the sum of £ for certain costs which by an order made by our court [*naming it*] in the matter of [*insert the title of the order*], dated the day of , were ordered to be paid by the said *C.D.* to *A.B.*, trustee of the estate of [*omit this if not applicable, and alter the form to suit the facts of the case*], which costs have been since taxed at the said sum of £ , as appears by an allocatur dated the day of , and that, &c. [*as in above forms*].

Given under the seal of the court, this day of 18 .

No. 113.

WRIT OF ELEGIT ON AN ORDER FOR PAYMENT OF A
DEBT APPEARING ON EXAMINATION IN COURT
TO BE DUE TO THE ESTATE OF AN INSOLVENT.

Section 117. [E.F. No. 134.]

Victoria, &c. :

Whereas [*recite the order for payment and that the money continues unpaid, as in the form of fieri facias above given, and proceed as in a writ of elegit at common law*].

Given under the seal of the court, this day of 18 .

No. 114.

WRIT OF ELEGIT ON AN ORDER FOR PAYMENT OF
DEBT APPEARING ON EXAMINATION IN COURT
TO BE DUE TO THE ESTATE OF AN INSOLVENT
AND OF COSTS ASSESSED BY THE COURT.

Section 117. [E.F. No. 135.]

Victoria, &c. :

Whereas [*recite the order for payment, including the portion of it relating to costs, and that the moneys are unpaid as before, and proceed as in last form with the necessary variations*].

No. 115.

WRIT OF ELEGIT ON AN ORDER FOR PAYMENT OF
COSTS TO BE TAXED.

Section 21. [E.F. No. 136.]

Victoria, &c. :

Whereas lately in our court [*naming it*] in a certain matter there depending, intituled "*In the matter of E.F.*," by an order of our said court made in the said matter, and bearing date the day of it was ordered that *C.D.* should pay unto *A.B.* certain costs as in the said order mentioned, and which costs

have been taxed and allowed by the registrar of our said court, at the sum of £ , as appears by the allocatur of the said registrar, dated the day of : And afterwards &c. [as in writs of *elegit* at common law and above forms, naming the date of the allocatur instead of the date of the order.]

General Rules
1st Oct., 1874.

Schedule.
Table I.

TABLE I.

SCALE OF ATTORNEY'S COSTS.

[See r. 144.]

For precedents of bills of costs on liquidation by arrangement and composition, see 50 L.T. 224.

Petitioning creditor's bill of costs to adjudication.

	£	s.	d.
Instructions for petition	1	0	0
Examining witnesses as to act of insolvency, when necessary	0	10	0
Examining particulars of petitioning creditor's account	0	6	8
The act of insolvency being a declaration admitting inability to pay, filed by the attorney to the petitioner, or an assignment prepared by the attorney to the petitioner, or default made upon a debtor's summons issued by the attorney to the petitioner, these two last charges will not be allowed. The expense of an assignment will not be allowed where a declaration of inability would answer the purpose.			
If attorney reside at a distance :—			
Writing agent to search for prior petition	0	3	6
Agent's writing result of search...	0	3	6
Searching, if prior petition filed	0	6	8
Drawing petition	0	10	0
If exceeding 10 folios, one shilling a folio.			
Ingrossing same, 6d. per folio (only to be allowed where the petition exceeds seven folios).			
Attesting signature of each petitioner, except in case of partnership...			
Drawing and fair copy affidavit verifying petition...	0	6	8
Attending petitioner to be sworn	0	3	4
Paid oath (if paid)	0	6	8
Copies of petition for sealing, 6d. per folio.			
Search for appearance	0	6	8
Paid witnesses			

See witness' scale. Petitioning creditor is not to be regarded as a witness, and is not to be paid for loss of time; he may claim his expenses of travelling and subsistence.

		£	s.	d.
General Rules				
1st Oct., 1874.	Attending on presentation of petition	1	0	0
Schedule.	Service of petition (see General Rules <i>infra</i>).			
Table I.	Attending court on hearing (where debtor does not appear or dispute)	0	13	4
	Where debtor appears	1	1	0
		3	3	0

Where the act of insolvency is the filing a declaration of inability to pay.

Drawing declaration of inability to pay	0	6	8
Attending attesting	0	6	8
Attending filing	0	6	8

Where act of insolvency is an assignment for benefit of creditors (to be allowed only by special order of the court).

Instructions for assignment	0	6	8
Drawing same	0	10	0
If above 10 folios, 1s. per folio.			
Fair copy, per folio, 6d.			
Paid stamp (amount paid).			
Attesting execution, each assigning party	0	6	8

Cost of debtor's summons.

Instructions for affidavit of debt, and for debtor's summons	0	13	4
Affidavit of debt, and copy	0	10	0
Particulars of demand (three copies) at 6d. per folio.			
Attending swearing each deponent	0	6	8
Paid oath (if paid)			
Attending filing... ..	0	6	8
Paid for office copy			
Summons, and two fair copies and particulars	1	0	0
Attending sealing summons copies and particulars	0	6	8

Costs where the debtor is required by the court to enter into a bond.

Attending making inquiries as to the sufficiency of sureties	0	13	4
This charge will be subject to increase, according to the distance of the sureties' residence; and, where necessary, agency charges for making such inquiries.			
Drawing exceptions to sureties	0	10	0
Service thereof on debtor's attorney... ..	0	5	0
Attending court when sureties allowed or disallowed	0	13	4
Costs of affidavits in opposition to the allowance of the bond for want of sufficiency of sureties, the same allowance as for other special affidavits			

Costs of debtor's summons, where the court allows costs to debtor on dismissal of summons.

The debtor's personal expenses for travelling and loss of time, according to the scale allowed to witnesses.
And if attended by an attorney, and his costs allowed (which must be by special order of the court).

	£	s.	d.	General Rules
Instructions to attend the court on the summons ...	0	6	8	1st Oct., 1874.
Affidavit of denial of debt ...	0	10	0	Schedule.
Paid oath ..				Table I.
Attending court on hearing of summons, and drawing up order ...	0	13	4	
Attending taxing ...	0	6	8	

Costs on application for warrant.

Instructions for affidavit in support of application for warrant ...	0	6	8
Drawing same, per folio, 1s.			
Fair copy, per folio, 6d.			
Attending to read over and to get same sworn ...	0	6	8
Attending court, warrant granted ...	0	13	4
Fair copy, per folio, 6d.			
Attending officer, instructing him as to the execution of the warrant...	0	6	8

Costs of disputing statements in petition.

Attending debtor served with copy of petition, taking instructions to show cause against same ...	0	6	8
Drawing notice showing cause ...	1	0	0
Two fair copies for service, each 6d. per folio.	0	5	0
Service on creditor, including postage ...	0	3	6
Ditto registrar ...	0	3	6
Perusing and considering petition ...	0	6	8
Examining witnesses in opposition ...	0	10	0
Costs of brief, and counsel's fee, where requisite to employ counsel.			
Attending court... from	1	0	0

Petitioning creditor's costs on insolvent disputing statements in petition.

The debtor having served notice of disputing the statements in petition, attending petitioner ...	0	6	8
Special attendances will be allowed to examine witnesses as to the facts they can prove, the charges for which, and for summoning them, will be in the discretion of the taxing officer, according to the circumstances; and where necessary to employ counsel to support the petition, the usual charges for brief and counsel's fees will be allowed.			
Attending court when adjudication made ... from	1	0	0

Costs of substituted service where debtor keeps out of the way to avoid service.

Several attendances to serve without effect, when it appearing that the debtor was keeping out of the way, and could not be personally served, instructions to apply to substituted service ...	0	6	8
Drawing affidavit of facts, and that due pains had been taken to effect personal service, per folio, 1s.			
Fair copy, 6d. per folio.			

General Rules		£	s.	d.
1st Oct., 1874.	Attending court for order of substituted service ..	0	13	4
Schedule.	Drawing up order, 1s. per folio.			
Table I.	<i>Costs of brief.</i>			
	Instructions for brief in discretion of taxing officer ... (Allowed only when counsel employed.)			
	Drawing same; 1s. per folio.			
	Fair copy, 6d. per folio			
	Fee to counsel and clerk			
	Attending him	0	6	8
	Where consultation or conference is necessary, attending to appoint same	0	6	8
	Fee to counsel and clerk			
	Attending consultation or conference	0	13	4
	<i>Costs of cases for opinion of counsel.</i>			
	Instructions for case	0	6	8
		1	1	0
	Drawing same, 1s. per folio.			
	Fair copy, 6d. per folio.			
	Fee to counsel and clerk			
	Attending him	0	6	8
	Where conference is necessary, attending to appoint same	0	6	8
	Fee to counsel and clerk			
	Attending conference	0	13	4
	Attending for perusing opinion	0	6	8
	Attending client, reading over opinion, and conferring with him thereon	0	6	8
	<i>Costs of motion.</i>			
	Instructions	0	6	8
	Where on appeal	0	13	4
	Drawing notice of motion to be served, per folio, 1s.			
	Fair copies, 6d. per folio.			
	Perusing documents (by town agent) in an appeal, from £1 1s. to £2 2s.			
	Making short note of motion, and attending registrar therewith previously to the sitting of the court ...	0	10	0
	Instructions for affidavit in support of motion ..	0	6	8
	[No instructions allowed where the attorney or his clerk makes the affidavit; fees allowed to coun- sel when very special.]			
	Drawing same, at per folio, 1s.			
	Fair copies, per folio, 6d.			
	Attending reading over, and to be sworn	0	6	8
	Paid oath... ..			
	Copy affidavit for service with the notice of motion, 6d. per folio.			
	Service, <i>see</i> General Rules.			
	Attending to file affidavit	0	6	8
	Paid for office copy, when required			
	Affidavit of service and copy notice of motion to annex ...	0	10	0
	Attending court on motion, if heard, £1 1s. ; if not ...	0	10	6
	Drawing order, per folio, 1s.			

	£	s.	d.	General Rules
Attending settling same	0	13	4	1st Oct., 1874
Fair copy, per folio, 6d				
Attending to pass order	0	6	8	Schedule.
Copy to serve, when necessary, per folio, 6d.				Table II.

GENERAL RULES

1. More than one attendance at presentation or hearing of insolvency petition will not be allowed unless ordered by the Court, and memorandum obtained to that effect.
2. Attendance upon the Court for necessary purposes not included in the foregoing scale, each 0 6 8
Attending Court on each sitting (including hearing of petition) 1 0 0
If by agent 2 0 0
Clerk's attendance at each sitting, when required ... 0 5 0
3. Service of petition, summons, order, notice, or other process, as in Supreme Court at Common Law.
4. General attendances, each 0 6 8
Long and special attendances 0 13 4
(Or more, in the discretion of the taxing officer.)
5. Writing letters, each, special 0 5 0
Ditto, common 0 3 6
6. Circular letters, if above twenty, each 0 1 0
If numerous, they must be printed.
7. Attendances to insert advertisements 0 3 4
8. Extra allowances for length of sittings may be made in the discretion of the taxing officer.
9. In special cases, where counsel are not instructed to appear in Court, a charge by the attorney for the preparation of minutes of fact or evidence for his own use may be allowed.

N.B.—Other matters not herein provided for are to be allowed on a similar scale, as nearly as may be, or in accordance with the practice of the Supreme Court at Common Law, according to the nature of the proceeding.

SCALE OF ALLOWANCES TO WITNESSES.

The same as in the Supreme Court at Common Law

TABLE II.

	Stamp Duty.		
	£	s.	d.
Every declaration by a debtor of inability to pay his debts	0	1	0
Every debtor's summons	0	5	0
Every insolvency petition	2	0	0
Every bond with sureties	0	5	0
Every affidavit filed, other than proof of debts	0	1	0
Every subpoena	0	1	0
Every petition under sections 202 or 204 of the Act	2	0	0
For despatching notice to creditors or others, exclusive of postage, each notice	0	0	3

General Rules		£	s.	d.
1st Oct., 1874.	Every application for a certificate	1	0	0
	Every application for search for proceedings	0	1	0
Schedule.	Every application to a Court	0	5	0
Table II.	Every office copy, each folio of 72 words	0	0	4
—	On every record of trial	1	0	0
Or such less sum as the Court may specially order.				
	Preparing advertisement for <i>Gazette</i> or local paper	0	3	6
	Every allocatur	0	5	0

NOTE.—The necessary fees for inserting advertisements in the *Gazette* or other papers (required to be inserted by the Registrar) are to be paid to him in cash by the person taking the proceeding which renders such insertion necessary.

Balliffs' and officers' fees are to be paid in cash, at the same rate as in cases in the Supreme Court at Common Law.

JAMES COCKLE, C.J.
CHARLES LILLEY, J.
EDMUND SHEPPARD, J.

(By the Judges)
J. MACKENZIE SHAW,
Registrar.

In the Supreme Court of Queensland.

IN INSOLVENCY.

As of Tuesday, the fifth day of September, A.D. 1876.

REGULÆ GENERALES.

IT is ordered by the Honourable Sir James Cockle, Knight, Chief Justice of Queensland, the Honourable Alfred James Peter Lutwyche, and the Honourable Charles Lilley, Esquires, Judges of Her Majesty's Supreme Court of Queensland:—

1. That all petitions, notices of motions, and proceedings in the first instance shall be marked in the margin under the title of the court, with the name of one of the judges, *ex. gr.:*

Proceedings to be assigned to a judge.

“ In the Supreme Court of Queensland.

“ In Insolvency.

“ The Chief Justice, *or* Mr. Justice .”

2. All subsequent proceedings and hearings requiring the presence of the judge shall be taken and had before the judge so named, unless otherwise ordered, and unless during his absence on circuit or from any other cause or emergency any other judge may see fit to act upon any application made to him therein.

Subsequent proceedings.

Provision for another judge acting.

3. The judge will sit only on his regular chamber days for the despatch of business, unless a special day has been appointed by him and notice thereof given to the principal registrar.

4. In case of pressure of business before any one judge, the court may (with the consent of the judge) assign causes or matters to the other judges in rotation.

Sittings.

Transfer.

By the Court,

(Signed) J. MACKENZIE SHAW,

Registrar.

General Rules

17th Aug.,

1877.

rr. 1-7.

In the Supreme Court of Queensland.

IN INSOLVENCY.

As of Friday, the seventeenth day of August, A.D. 1877.

REGULÆ GENERALES.

Service of
petition on the
principal
receiver.

1. An office copy of every petition filed in the principal registry under Part III of the Act shall be forthwith served upon the principal receiver in insolvency by the solicitor acting in the matter, or by the insolvent, if applying in person.

Service of order
of adjudication
on trustee.

2. A duplicate copy of the order of adjudication in every matter shall be immediately served upon the official trustee by the solicitor acting in the matter, or by the insolvent, if applying in person.

Service on
official trustee
when trustee
elected.

3. An office copy of the certificate of confirmation of appointment of an elected trustee shall be immediately served upon the official trustee of the estate.

Notice of
proceedings to
be given to
trustee.

4. Notice in writing of every proceeding about to be instituted before the court shall be served upon the trustee of the estate before one o'clock of the day preceding the day on which the application is to be made by the solicitor, or by the applicant, if appearing in person. This rule shall not limit the operation of rules 38 to 45 inclusive of the General Rules in Insolvency.

Occupation,
address and
address to be
given in all
proceedings.

5. In all proceedings, the occupation of the insolvent shall be described in full, in addition to his name and address.

Date of petition.

6. Every petition shall be dated upon the day upon which it was signed.

Bank.

7. Section 136, Rule 93.—In all estates wherein the official trustee remains the trustee, it shall be sufficient, if no special direction be given by the creditors or committee of inspection as to the bank at which the account shall be kept, for him to keep the moneys in such estate at one

account with a bank, to be entitled the account of "The General Rules Official Trustee in Insolvency, Brisbane" [or Bowen]. 17th Aug., 1877.

8. In all estates where no committee of inspection is appointed, the accounts of the trustee shall be audited by the accountant in insolvency. rr. 8-11.
 Audit where no committee of inspection.

9. Section 193.—In rule 185, the words "30th day of June and the" shall be inserted and read immediately before the words "31st day of December."
 Alteration of rule 185.

10. Debtor's petition, Section 43.—For the purposes of the 82nd section of the Act, a petition shall be deemed to have been dismissed where application for adjudication shall not have been made, as required by the 22nd rule, and no formal application for its dismissal shall be necessary.
 When debtor's petition to be deemed dismissed.

11. In the case of the dismissal of a petition under the provisions of the foregoing rule, the expenses incurred by the receiver in taking possession of property under the petition, shall be paid out of the property so taken possession of, or before restoration of the property; and the receiver may, if necessary, sell a sufficient part of the property for that purpose.
 Receiver's expenses.

(Signed) JAMES COCKLE, C.J.
ALFRED J. P. LUTWYCHE, J.
CHARLES LILLEY, J.

(Signed) J. MACKENZIE SHAW,
Registrar.

In the Supreme Court of Queensland.

As of Thursday, the twenty-ninth day of August, A.D. 1878.

General Rules
29th Aug.,
1878.

IT is ordered by the Honourable Alfred James Peter Lutwyche, Acting Chief Justice, the Honourable Charles Lilley, and the Honourable Edmund Sheppard, Esquires, in pursuance and execution of all powers and authorities vested in them by "*The Insolvency Act of 1874*," as follows:—

General Rules 1. A creditor making preliminary proof of a debt under
 29th Aug., section 90 of "*The Insolvency Act of 1874*" shall make
 1878. his affidavit in the form No. 22 in the schedule, with the
 rr. 1-2. addition of the words following:—"And I further say
 Preliminary that the said sum does not include any unliquidated or
 proof. contingent debt, or any debt the value of which is not
 ascertained."

Affidavit to be 2. Every such affidavit shall be filed in the principal
 filed and transmitted. registry, and every district court judge, police magis-
 trate, commissioner for affidavits, or district registrar,
 before whom such affidavit shall have been sworn, shall
 transmit such affidavit by post to the principal registry.

(Signed) ALFRED J. P. LUTWYCHE, A.C.J.
 CHARLES LILLEY, J.
 EDMUND SHEPPARD, J.

In the Supreme Court of Queensland.

General Rules *As of Friday, the twelfth day of December, A.D. 1879.*

12th Dec., 1879. **I**T is hereby ordered, under and by virtue of the Regulæ
 Bank. Generales of the 17th day of August, 1877, that the
 Queensland National Bank, Limited, shall be the bank
 into which the official trustee in insolvency shall pay all
 moneys received by him as such official trustee; and that
 the said account shall be kept in said bank under the style
 or heading of "The Account of the Official Trustee in
 Insolvency."

By the Court,
 W. LAMBERT FOWLES,
 Registrar.

Appendix
No. 1.
17 Vic. No. 17
ss. 14.

APPENDIX.

No. 1.

11 VICTORIA, No. 13.

An Act to amend the law respecting defamatory words and libel.

SEC. 14. And be it enacted that from and after the passing of this Act no law which is now or may hereafter be in force in the said colony for the relief of insolvent debtors or for the abolition of imprisonment for debt shall extend or be construed to extend to affect or discharge from his liability any person who shall be indebted for any penalty damages or costs adjudged against him in any proceeding either civil or criminal for the printing or publishing of any blasphemous seditious or defamatory words or libel.

Persons liable
for penalties
for printing any
blasphemous,
seditious or
defamatory
libel not
relieved from
such liability by
any Act for
relief of
insolvent
debtors, or for
abolition of
imprisonment
for debt.

See "*The Insolvency Act of 1874*," sec. 173.

No. 2.

13 VICTORIA, No. 28.

An Act to amend and consolidate the laws relating to seamen in the merchant service of the Colony of New South Wales and for keeping a register of seamen belonging to ships registered in the said colony.

SEC. 19. And be it enacted that all the rights liens privileges and remedies (save such remedies as are against a master himself) which by this Act or by any law statute custom or usage belonging to any seaman or mariner not being a master mariner in respect to the recovery of his wages shall in the case of the bankruptcy or insolvency of the owner of the ship also belong and be extended to masters of such ships or master mariners in respect of the recovery of wages due to them from the owner of any such ship belonging to any of Her Majesty's subjects and that no suit or proceeding for the recovery of wages shall unless they exceed twenty pounds be instituted against such ship or the master or owner thereof either in any Vice-Admiralty Court or any court of record in the said colony unless the owner of the ship shall be bankrupt or insolvent or the ship shall be under arrest or be sold by the authority of any Admiralty or Vice-Admiralty Court or unless any magistrate acting under the authority of law shall by writing under his hand refer the

No. 2.
13 Vic. No. 28
s. 19.

Master's right
of wages against
owner.

Suits for wages

Appendix	case to be adjudged by any such court or courts or unless neither
No. 3.	the owner nor master shall be or reside at or near the port or place
17 Vic. No. 17	where the service shall have terminated or where any seaman shall
ss. 1-2.	have been discharged or put on shore.

No. 3.

17 VICTORIA, No. 17.

An Act for the appropriation of unclaimed balances in intestate and insolvent estates and for other purposes therein mentioned.

[5th September, 1853.]

Preamble.

Whereas by an Act of Council passed in the thirteenth year of the reign of Her present Majesty numbered forty-four it was amongst other things enacted that in the first week of January in each year all sums which should thereafter be in the hands of the curator of intestate estates to the credit of any intestate estate for the term of six years next preceding should subject to a proviso in favour of persons who should thereafter establish claims thereto together with the fees and commissions payable on collections in intestacy be paid into the hands of the Colonial Treasurer to be by him applied in payment of certain claims on the then late registrar of the Supreme Court arising out of his collections in intestate's estates And whereas it is expected that the said claims on the said late registrar will shortly be satisfied And whereas no provision has been made for the appropriation of such sums as shall after the satisfaction of such claims be in the hands of the said Colonial Treasurer from payments made to him by the said curator of intestate estates in pursuance of the recited Act And whereas the assignees of insolvent estates have and may hereafter from time to time have in their hands unclaimed dividends and other sums being the amount of balances in such estates too small to admit of division amongst the creditors and it is expedient to provide for the appropriation thereof to the public uses of the colony subject to proper provision in favour of claimants who may thereafter establish their claims thereto Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof as follows—

1. Repealed by "*The Repealing Act of 1867*," 31 Vic., No. 39, s. 2.

Assignees to
file certain
accounts.

2. The several assignees of insolvent estates shall respectively in the first week of January in every year file in the office of the chief commissioner of insolvent estates an account of all sums of money which on the thirty-first day of December then preceding shall have been in their hands respectively as such assignees for three years or upwards arising either from unclaimed or unpaid dividends due to

creditors in insolvent estates or from balances or other moneys which (owing to whatever cause the non-appropriation may be) shall remain in fact undivided among or unappropriated to the creditors in such estates which accounts shall severally be verified by the affidavit of the official assignee filing the same. Provided that nothing contained in this or the next section shall extend to or affect any person who has resigned his office of assignee and thereupon or previously thereto shall have filed accounts of all such sums and balances and paid the amount thereof into court.

Appendix
No. 3.
17 Vic. No. 17
ss. 3-5.

3. The several assignees who shall have filed such accounts shall within seven days after filing the same respectively pay the whole amount which shall thereby respectively appear to be in their hands to the Colonial Treasurer and all such sums shall subject to the proviso hereinafter contained for refunding the same to such persons as may thereafter establish claims thereto be applied to the public uses of the colony and in support of the government thereof.

The moneys to
be paid into
Treasury.

4. And whereas divers sums of money have been paid from time to time to the chief commissioner of insolvent estates by official assignees trustees of insolvent estates and other persons and are now in his hands being respectively moneys arising from unclaimed dividends and unappropriated and undivided balances and other sums in insolvent estates. Be it therefore enacted as follows. So much of the said moneys as shall have been in the hands of such official assignees trustees and others on or before the thirtieth day of September one thousand eight hundred and fifty shall in the first week in January next be paid by the said chief commissioner into the hands of the Colonial Treasurer as part of the moneys to be received and appropriated by virtue of this Act and so much of the residue of those moneys as shall on the thirty-first day of December in the year one thousand eight hundred and fifty-four and on the same day in each or any succeeding year have then remained unclaimed or unappropriated for the space of three years shall in the first week of January following be similarly paid by the chief commissioner to the Colonial Treasurer to be appropriated in like manner.

Money in hands
of chief
commissioner
of insolvent
estates.

5. Provided always that if at any time after any sums of money belonging to insolvent estates shall have been so paid into the Colonial Treasury a claim thereto shall be established to the satisfaction of the Supreme Court such court shall make an order for the payment thereof and upon any such order being served upon the Colonial Secretary it shall be lawful for the Governor and he is hereby required to issue a warrant under his hand to the Colonial Treasurer directing him to pay the money mentioned in such order to the party entitled to receive the same in pursuance thereof but no interest shall be paid or be payable on any such sum of money by virtue of any such order or otherwise from the time when the same shall have been paid to the Colonial Treasurer as aforesaid.

Proviso as to
payment of
claims
satisfactorily
established
after payment of
moneys to
Colonial
Treasurer.

- Appendix No. 3. 6. Repealed by "*The Repealing Act of 1867*," 31 Vic., No. 39, s. 2.
- 17 Vic. No. 17 ss. 6-7. 7. Upon the death resignation or removal of any assignee of insolvent estates now or hereafter appointed it shall be lawful for the Supreme Court upon being satisfied that such assignee has performed his duties and accounted for all moneys received by him as such assignee and upon payment by him or his personal representative of any balances or other moneys not previously duly appropriated as the said court shall direct to order any bond which may have been entered into by such assignee for the due performance of his duties to be delivered up to be cancelled and the same shall be delivered up accordingly and such official assignee shall if alive be discharged from his office but without prejudice in either case to the remedy of any person against him or his estate in respect of any claim by reason of anything done or omitted by such assignee.

Release of assignees duly accounting.

No. 4.
25 Vic. No. 14
s. 86.

No. 4.

25 VICTORIA, No. 14.

THE REAL PROPERTY ACT OF 1861.

Transmission by insolvency. Certified copy of appointment of official assignee and elected assignee to be deposited with Registrar-General.

Upon entry of such appointment official assignee and elected assignee empowered to deal with lands.

Insolvency of trustees not to affect beneficiaries.

SEC. 86. Whenever such transmission shall take place by virtue of the insolvency of a registered proprietor an office copy or other duly certified copy of the appointment of the official assignee of the insolvent estate or of the appointment of such official assignee and of an elected assignee as the case may be or such other sufficient evidence of such appointment or appointments as he may require shall be left with the Registrar-General (a) and he shall thereupon enter a memorandum of the particulars of such appointment in the register book and upon such entry being made it shall be lawful for such official assignee or official or elected assignees to transfer to any purchaser or other person the land estate or interest so transmitted as aforesaid and every memorandum of transfer or other instrument for that purpose executed by such official assignee or such official and elected assignees in accordance with the provisions of this Act shall have the same validity and effect as a like instrument would have had if executed by the registered proprietor before his insolvency. Provided always that nothing herein contained shall alter or vary the position of the official assignee or official and elected assignees of an insolvent trustee of any land as between such official assignee or official and elected assignee and any person who may be beneficially interested in any land of which such insolvent trustee is the registered proprietor but the rights of such persons (if any) as between them and such official assignee or

(a) Now Registrar of Titles; see 48 Vic., No. 4, s. 4.

official and elected assignees in respect of such land shall remain entirely unaffected notwithstanding the insolvency of the registered proprietor of the said land and the said insolvent shall transfer the said land to the persons beneficially interested therein and shall do and execute all acts which may be necessary for nominating a new trustee or new trustees of the said land and carrying into effect any trusts affecting the said land at the date of his insolvency.

Appendix.

No. 4.

25 Vic. No. 14

s. 86.

As to the certificate of the appointment of trustees being deemed a conveyance, see "*The Insolvency Act of 1874*," s. 101 (9).

See "*The Real Property Act of 1867*" (41 Vic., No. 13), s. 34, *post*.

No. 5.

31 VICTORIA, No. 14.

No. 5.

31 Vic. No. 14

s. 24.

JOINDER AND REVIVOR ACT.

An Act to consolidate and amend the laws relating to the joinder of causes of action and of parties to actions and to the revivor of actions at common law.

SEC. 24. The bankruptcy or insolvency of the plaintiff in any action which the assignees might maintain for the benefit of the creditors shall not be pleaded in bar to such action unless the assignees shall decline to continue it and give security for the costs thereof upon a judge's summons for that purpose within such reasonable time as the judge may order but the proceedings may be stayed until such election is made and in case the assignees neglect or refuse to continue the action and give such security within the time limited by the order the defendant may within eight days after such neglect or refusal plead the bankruptcy or insolvency.

Bankruptcy and insolvency of plaintiff when not to abate action.
17 Vic., No. 21, s. 115.
2 Pring, 1,629, 15 & 16 Vic., c. 76, s. 142.

Consider "Rules of the Supreme Court"—O. XLIX.

No. 6.

31 VICTORIA, No. 17.

No. 6.

31 Vic. No. 17

s. 87.

THE COMMON LAW PRACTICE ACT OF 1867.

An Act to consolidate and amend the laws relating to practice at common law.

SEC. 87. If at any time after the expiration of twenty-one days next after the execution of such warrant of attorney and adjudication of insolvency shall be issued against the person who shall have given such warrant of attorney under which he shall be duly found and declared an insolvent then and in such case unless such warrant

In what case warrant of attorney deemed fraudulent.
8 Geo. IV, c. 39, s. 2.

Appendix of attorney or a copy thereof shall have been filed as aforesaid
 No. 6. within the said space of twenty-one days from the execution thereof
 31 Vic. No. 17 or unless judgment shall have been signed or execution issued on
 s. 87. such warrant of attorney within the same period such warrant of
 attorney and the judgment and execution thereon shall be deemed
 fraudulent and void against the assignees under such adjudication
 and such assignees shall be entitled to recover back and receive for
 the use of the creditors of such insolvent at large all and every the
 moneys levied or effects seized under and by virtue of such judgment
 and execution.

No. 7.
 31 Vic. No. 18
 s. 140.

No. 7.

31 VICTORIA, No. 18.

THE EQUITY ACT OF 1867.

An Act to consolidate and amend the laws relating to proceedings in equity.

Discharge of
 insolvent may
 extend to
 process for
 contempt in
 non-payment of
 money, and to
 costs incurred
 by creditor, but
 subject to
 taxation.
 11 Geo. IV, &
 1 Wm. IV,
 c. 36, r. 16.
 2 Pring, 1,670.

SEC. 140. The discharge of any prisoner adjudicated upon under the authority of any Act already or which may hereafter be passed for the relief of insolvent debtors shall and may extend to all process issuing from any court of equity for any contempt of such court for non-payment of money or of costs charges or expenses in any such court and in such case the said discharge shall be deemed to extend to all costs which such prisoner shall be liable to pay in consequence or by reason of such contempt or on purging the same and every discharge so adjudicated as aforesaid as to any debt or damages of any creditor of such prisoner shall be deemed to extend also to all costs incurred by such creditor before the filing of such prisoner's schedule in any action or suit brought by such creditor against such prisoner for the purpose for the recovery of the same and all persons as to whose demands for any such costs money or expenses any such person shall be so adjudged to be discharged shall be deemed and taken to the creditors of such prisoner in respect thereof and entitled to the benefits of all the provisions made for creditors by the said Act or any future Act subject nevertheless to such ascertaining of the amount of the said demands as may be had by taxation or otherwise and to such examination thereof as is in the said last mentioned Act or as shall be in any future Act provided in respect of all claim to a dividend of such insolvent's estate and effects.

No. 8.

31 VICTORIA, No. 21.

THE LEGISLATIVE ASSEMBLY ACT OF 1867.

An Act to consolidate certain laws relating to the Legislative Assembly.

SEC. 7. If any member of the Assembly shall for one whole session of the legislature without the permission of the Assembly entered upon its journals fail to give his attendance in the said House or shall take any oath or make declaration or acknowledgment of allegiance obedience or adherence to any foreign prince or power or do or concur in or adopt any act whereby he may become a subject or citizen of any foreign state or power or become entitled to the rights privileges or immunities of a subject of any foreign state or power or shall become bankrupt or an insolvent debtor within the meaning of the laws in force within the said colony relating to bankrupts or insolvent debtors or shall become a public contractor or defaulter or be attainted of treason or be convicted of felony or any infamous crime his seat in such Assembly shall thereby become vacant.

Appendix

No. 8.

31 Vic. No. 21

s. 7.

Vacating seats
of members of
Assembly in
certain cases.
18 & 19 Vic.,
c. 54.
1 Pring, 227.
Schedule,
17 Vic., No. 41,
s. 26.

No. 9.

31 VICTORIA, No. 36.

THE MERCANTILE ACT OF 1867.

An Act to consolidate and amend the laws relating to mercantile matters.

SEC. 29. All mortgages of sheep cattle and horses which shall hereafter be made *bond fide* and for valuable consideration and where the names of the parties thereto and the particulars thereof shall be duly registered within thirty days after the date thereof in the office of the said registrar according to the jurisdiction wherein such mortgaged live stock shall be depastured in the form mentioned in schedule C appended to this section shall be valid in the law to all intents and purposes whether the moneys secured by the said mortgage be payable presently or not and notwithstanding the said mortgaged live stocks shall not be delivered over to the mortgagee but shall remain and continue in every respect as theretofore in the possession order and disposition of the said mortgagor and though the said mortgagor afterwards take the benefit of any law now or hereafter to be in force in the said colony for the relief of bankrupt or insolvent debtors Provided that no mortgage shall protect the same from the operation of any such law unless such mortgage shall have been executed at least sixty days before the date of the order for sequestration or unless the consideration thereof shall be an advance or loan made at the time of the execution of such mortgage.

No. 9.

31 Vic. No. 36

s. 29.

Right of
Mortgagee
where
possession in
mortgagor.
24 Vic., No. 10,
s. 4.
1 Pring, 975.

No. 9.
31 Vic. No. 36

SCHEDULE C.

s. 39.
24 Vic., No. 10,
schedule B.
1 Pring, 977.

Date of Deed.	Name of Mortgagor.	Name of Mortgagee.	Consideration.	Numbers and Description of Mortgaged Sheep, Cattle, or Horses, and the Brand or other Distinctive Mark and Station where the same are Depasturing, as also the Name of the Principal Superintendent or Overseer.
	Name of Witness or Witnesses.			

Liens not
affected by sale,
&c. of land.
27 Vic., No. 3,
s. 3.
3 Pring, 206.

(See 34 Vic.,
No. 16).
Provisos.

SEC. 39. No such lien duly made and registered shall be extinguished or otherwise prejudicially affected by any sale mortgage or other encumbrance of or upon the land on which any such crop shall be growing nor by the death or insolvency of the lienor. Provided that if such lienor his executors administrators or assigns shall neglect or refuse either to pay off the whole of such advance with interest as agreed upon or to give up such crop to the lienee thereof in pursuance of the agreement such lienee his executors administrators or assigns may enter into possession thereof and may gather carry away and sell the same and may apply the proceeds in paying himself such advance with interest as aforesaid and all expenses of clearing carrying away making marketable and selling any such crop and shall pay the balance to the lienor his executors administrators or assigns. Provided that if such lienor be a tenant then the lienee shall before selling any such crop or crops pay to the landlord of the land whereon such crop or crops shall be growing such sum of money as may be due to him for rent at the time of carrying away such crop or crops and the lienee may repay himself the sum so paid out of the proceeds of the sale of such crop or crops before paying over the balance to the lienor provided that the sum so paid shall not exceed one year's rent. Provided also that if at the time of making such lien there be in force a mortgage of the land whereon such crop or crops shall be growing and the land shall be in the occupation of the mortgagee such lienee shall before selling any such crop or crops pay to the mortgagee the amount of interest not however exceeding twelve month's interest due upon such mortgage at the time of carrying away or selling such crop or crops and such lienee may repay himself the sum or sums so paid for interest out of the proceeds of the sale of such crop or crops before paying over the balance to the lienor.

As to the provisions of "*The Masters and Servants Act of 1861*," and "*The Wages Acts of 1870 and 1884*," affecting these sections, see those Acts.

No. 10.

31 VICTORIA, No. 38

THE CONSTITUTION ACT OF 1867.

An Act to consolidate the laws relating to the Constitution of the Colony of Queensland.

SEC. 23. If any legislative councillor shall for two successive sessions of the legislature of the said colony fail to give his attendance in the said Legislative Council without the permission of Her Majesty or of the Governor of the colony signified by the said Governor to the Legislative Council or shall take any oath or make any declaration or acknowledgment of allegiance obedience or adherence to any foreign prince or power or shall do concur in or adopt any act whereby he may become a subject or citizen of any foreign state or power or whereby he may become entitled to the rights privileges or immunities of a subject or citizen of any foreign state or power or shall become bankrupt or take the benefit of any law relating to insolvent debtors or become a public contractor or defaulter or be attainted of treason or be convicted of felony or of any infamous crime his seat in such council shall thereby become vacant.

Appendix
No. 10.
31 Vic. No 38.
s. 23.

Vacating seat
by absence.
Schedule to
18 & 19 Vic.,
c. 54.
17 Vic., No. 41,
s. 5
1 Pring, 224.

No. 11.

36 VICTORIA, No. 13.

THE ELECTRIC TELEGRAPH MESSAGES
ACT OF 1872.

SEC. 4. It shall be lawful for the Governor the President of the Legislative Council the Speaker of the Legislative Assembly the Judges of the Supreme Court and District Courts the Ministers of the Crown and any principal officer of Government or attorney or solicitor to cause to be transmitted by electric telegraph the contents of any writ warrant rule order authority or other communication requiring signature or seal subject to the provisions following that is to say—

Certain
documents may
be transmitted
by telegraph
under
restrictions

No. 11.
36 Vic. No. 13
s. 4.

- (1.) The original document shall be delivered at the telegraph station in the presence and under the inspection of some justice of the peace.
- (2.) The person to whom the contents of any such document shall be so sent shall forthwith in the presence and under the supervision of a justice of the peace cause to be sent back by electric telegraph a copy of the message received

Appendix
No. 11.
36 Vic. No. 13
ss. 5-7.

by him and in the event of any error appearing therein the process shall be repeated under the like supervision until it shall appear that a true copy of such document has been received by the person to whom it shall have been sent.

- (3.) When it shall appear that such true copy has been so received such first-mentioned justice shall endorse upon the original document a certificate that a true copy thereof has been sent under the provisions of this Act to the person to whom the same shall have been so sent and shall forthwith by electric telegraph inform such person that such certificate has been so endorsed.
- (4.) The person so receiving such true copy shall upon receiving information of such certificate endorse upon the copy of the original document received by him a certificate that the same has been duly received under the provisions of this Act which certificate shall be signed by him and by the justice so supervising the receipt of such copy as hereinbefore provided.

Copies so
transmitted to
be as valid and
effectual as
originals.

SEC. 5. Every copy so endorsed and certified shall be as valid to all intents and purposes as the original whereof it purports to be a copy would have been and shall be admissible in evidence in any case in which the original would have been so admissible and any person by whom such copy shall have been so received or who shall be thereby authorised instructed or commanded or who shall or may be lawfully charged with any duty in respect thereof shall have and become liable to the same rights and duties in respect thereof as if he had received such original document duly signed and sealed or signed or sealed as the case may be. And in the case of documents intended to be served or the efficacy or use whereof depends upon service every such copy shall for the purpose of such service be deemed to be the original document whereof it purports to be a copy.

Original
documents of
which copies
transmitted to
be open to
inspection.

SEC. 6. Every original document a copy whereof shall have been transmitted under the fourth section of this Act shall be kept at the telegraph station at which it was delivered for the purposes of such transmission and shall after the expiration of two days from the date of the certificate under sub-section three of that section being endorsed upon it be open within reasonable hours to the inspection of any person upon payment of a fee of one shilling.

Penalty for
wilful delivery
of message to
wrong person.

SEC. 7. Any person who being charged with the delivery of any telegraphic message shall wilfully deliver the same to any person other than the person to whom the same shall be addressed or his

authorised agent in that behalf shall be guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years with or without hard labor.

Appendix
No. 11.
38 Vic. No. 13
ss. 8-10.

SEC. 8. Whosoever without lawful authority or excuse (the proof whereof shall be on the person accused) shall sign the name of any other person to any telegraphic message with intent to procure such message to be sent as a message from such other person shall be guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years with or without hard labor.

Penalty for
signing
another's name
to message to be
sent.

SEC. 9. Any justice who shall wilfully and falsely endorse upon any original document delivered at a telegraph station for the purpose of being transmitted under the provisions of this Act a certificate that a true copy thereof has been sent under this Act or who shall by telegraph wilfully and falsely inform any person to whom such document shall have been so sent that a certificate under the provisions of this Act has been endorsed thereon shall forfeit a sum not exceeding one hundred pounds which may be sued for and recovered by the first person who shall for his own benefit and without collusion sue for the same.

Penalty for
false certificate
of sending
message under
section 4.

SEC. 10. Any person by this Act required to sign any certificate upon any copy of a document that such copy has been duly received under the provisions of this Act who shall wilfully sign any such certificate knowing the same to be false shall be guilty of felony and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labor and with or without solitary confinement.

Signing false
certificate upon
copy under
section 4 to be
felony.

No. 12.

38 VICTORIA, No. 3.

No. 12.

38 Vic. No. 3.

s. 20.

"Supreme Court Act of 1874."—An Act to amend "The Supreme Court Act of 1867."

SEC. 20. Any writ or other process issued out of the office of the registrar prothonotary or master in equity at Bowen shall be returnable in the same office but shall have full force and effect and may be enforced at any place within the colony Provided that no petition for adjudication of insolvency against any debtor whose usual residence is not within the district to be assigned as aforesaid shall be made returnable elsewhere than at Brisbane.

Process
returnable.

Appendix
No. 13.
38 Vic. No. 11
s. 67.

Lands held
under miner's
right.

No. 13.
38 VICTORIA, No. 11.
THE GOLD FIELDS ACT OF 1874.
An Act for the management of gold fields.

SEC. 67. All lands held under a miner's right consolidated miner's right business license or mining lease shall on the death or insolvency of the holder or holders thereof devolve on his or their personal representative or representatives or assignee or trustee in insolvency and shall be liable to seizure and sale under any execution issued from the Supreme Court District Court Small Debts Court Warden's Court or any other competent court in the said colony The proper officer appointed to sell the same shall have full power to give an effectual transfer of the interest sold by him.

This Act has been applied and extended by 50 Vic., Nos. 15, 19, & 32.

No. 14.
41 Vic. No. 18
s. 34.

Transmission
by registered
adjudication of
insolvency
subsequently
annulled.

No. 14.
41 VICTORIA, No. 18.
THE REAL PROPERTY ACT OF 1877.

SEC. 34. Whenever transmission shall take place by reason of an adjudication of insolvency on which a transmission has been entered under the eighty-sixth section of the principal Act being annulled an office copy or other duly certified copy of the order annulling the adjudication shall be left with the Registrar-General (a) and he shall thereupon enter a memorandum of the particulars of such order in the register book against any property undisposed of under the previous entry and upon such entry being made the person named in that behalf in the order annulling the adjudication or if no person be so named then the person who was adjudged insolvent shall be deemed to be the proprietor of the property so undisposed of.

As to the consequences of annulling of adjudication, see "*The Insolvency Act of 1874*," s. 178.

(a) Now Registrar of Titles; see 48 Vic., No. 4, s. 4.

No. 15.
42 Vic. No. 8
s. 34.

Disqualifica-
tions.

No. 15.
42 VICTORIA, No. 8.
THE LOCAL GOVERNMENT ACT OF 1878.
An Act to consolidate and amend the laws relating to municipal institutions and to provide more effectually for local government.

SEC. 34. No person being or serving as a judge of any court of justice other than a court of petty sessions or holding any office or

place of profit under or in the gift or disposal of the Crown or the council or being an officer in full pay in the naval or military service of Her Majesty other than the volunteer force of the colony and no person having his affairs under liquidation by arrangement with his creditors and no uncertificated and undischarged insolvent and no person attainted of treason no person of unsound mind and no person not qualified as herein required or disqualified hereunder shall be capable of being or continuing a councillor or auditor of any municipality.

Appendix
No. 15.
42 Vic. No. 8
s. 263.

SEC. 263. The chairman or municipal clerk may in all proceedings under or for the purpose of procuring any adjudication of insolvency against any person against whom the council has any claim or demand represent the council and act in their behalf in all respects as if such claim or demand had been the claim or demand of such chairman as clerk.

Proceedings in
estates of
insolvents, &c.

This Act has been applied and amended by 50 Vic., Nos. 21 & 23.

No. 16.

43 VICTORIA, No. 8.

No. 16.

43 Vic. No. 8

s. 2.

THE LIFE INSURANCE ACT OF 1879.

An Act to encourage and protect life insurances and other like provident arrangements.

SEC. 2. The property and interest of the insured in any policy of assurance *bond fide* effected upon his own life shall not in the event of his insolvency pass to the trustee of his estate nor shall the property and interest of the insured in such policy or the property and interest of his personal representatives in such policy or the moneys payable under or in respect of such policy be liable to be made available for or towards the payment of his debts by any judgment decree order or process of any court or in any other manner whatsoever.

Interest of
insured
protected in
certain cases.

Provided that in case of the death of the insured within three years from the date of insurance a sum equal to all sums which shall have been paid by way of premium with simple interest thereon at the rate of six per centum per annum shall be set apart from the moneys payable under the policy and shall be available for the payment of the debts of the insured.

Provided also that in cases where the time stipulated by any policy during which premiums shall continue to be payable during the lifetime of the insured is less than seven years the provisions of this section shall not apply except in case of the death of the insured until the policy shall have endured for at least three years.

Provided also that the protection of this section shall not extend to any moneys which shall actually be received under or in respect of any policy by the insured in his lifetime.

Appendix
No. 17.
43 Vic. No. 17
s. 6.

No. 17.

43 VICTORIA, No. 17.

THE DIVISIONAL BOARDS ACT OF 1879.

Disqualifica-
tions.

SEC. 6. No person holding any office of profit under the Government and no person concerned or participating in the profit of any contract with the board and no person being the holder of any publican's license and no person having his affairs under liquidation by arrangement with his creditors and no person being an uncertificated or undischarged insolvent and no person who has been convicted of felony unless he has received a free pardon or has undergone the sentence passed upon him and no person of unsound mind shall be capable of being or continuing a member of any divisional board.

No. 18.
49 Vic. No. 18
s. 55.

No. 18.

49 VICTORIA, No. 18.

THE LICENSING ACT OF 1885.

Death or
insolvency of
licensee.

SEC. 55. Upon the death or insolvency of a licensee or holder of a certificate under this Act the executor named in the will of such deceased person or the legal personal representative or nearest of kin of such deceased person or the Curator of Intestate Estates on his behalf or the trustee of the estate of such insolvent person may apply to the Police Magistrate or any two licensing justices for permission for such executor or legal personal representative or Curator of Intestate Estates or trustee as the case may be either by himself or by an agent to be approved by such Police Magistrate or licensing justices to carry on the business of such deceased or insolvent person until the end of the term for which the license or certificate was granted.

Provided that every such application be made forthwith after such death or insolvency otherwise the license shall become and be void.

Schedule of
forms 7 and 8.

Every such certificate of permission shall be as nearly as may be in such one of the seventh and eighth forms in the seventh schedule to this Act as may be applicable and the grantee thereof shall be subject to the provisions of this Act in the same manner as the original licensee or holder of a certificate would have been.

INDEX.

ABATEMENT—

proceedings do not abate by death of insolvent, 115.

ABOLITION—

of office of official assignee provided for, 150.

ABROAD—

going or remaining with intent, &c., an act of insolvency, 19.

service where debtor is abroad, 168.

creditor abroad showing cause against liquidation resolution, 214.

ABSCONDING—

debtor absconding may be arrested, 35.

form of warrant, 246.

debtor absconding with property amounting to £20, 145.

ABSENTING—

debtor absenting with intent, &c., commits an act of insolvency, 20.

ACCOUNTANT IN INSOLVENCY—

appointed by Governor in Council, 122.

to examine trustee's accounts, 123.

may require trustees to answer enquiries, 123.

to enquire into and report on conduct of trustees, 198.

to keep "Registers of Insolvencies," 195.

to make entries of *Gazette* notices, 195.

to keep registers open for inspection, 195.

may require extracts from registrar's books, 196.

to report on accounts of trustees applying for release, 197.

to have custody of records belonging to official assignees, 150.

to audit accounts of official trustee when acting as trustee in estate, 181.

ACCOUNT (books of) omitting to keep, 144.

ACCOUNTS (trustees)—

statements of, to be transmitted to accountant, 122.

trustee to keep "Record" and "Estate Book," 196.

report on, before release of trustee, 197.

auditing of, by committee of inspection, 75.

certificate of audit to be forwarded to accountant, 196.

of trustee resigning or removed, 181.

annual return to be made to accountant, 197.

ACCOUNTS (insolvents or debtors)—

See STATEMENT OF AFFAIRS.

ACCOUNTS (of mortgaged property)—

secured creditor may make application for taking, 170.

enquiries may be made and documents produced, 172.

ACT—

came into operation 1st October, 1874, 2.

application of, to future insolvencies, 5.

application of, to debtors, 14.

ACTIONS—

trustee may bring or defend, 82.

trustee's official name to be used in, 57.

ACTIONS—Continued.

- trustee may commence, conjointly with insolvent's partner, 98.
- protection of trustee from, in certain cases, 54.
- do not lie for dividends, 97.
- assignee of chose in action may bring or defend, 120.
- by or against joint contractors, 121.
- insolvent may continue, for personal injury, 46.
- restraining, after presentation of insolvency petition, 40.
- the like in liquidation, 200.
- the like after resolution, 209.
- limitation of, in respect of matters arising under act, 121.

ACTS—

See STATUTES.

ACTS OF INSOLVENCY—

- assignment to trustee for benefit of creditors, 19.
- beginning to keep house with intent, &c., 20.
- compounding with petitioning creditor, 20.
- declaration of inability to pay debts, 20.
- departing from colony with intent, &c., 19.
- departing from dwelling-house with intent, &c., 19.
- failing to satisfy execution for not less than £50 within four days, 20.
- failing to point out property to satisfy judgment, 21.
- failing to present petition after consenting or request of creditors, 21-22.
- failing to pay or compound on debtor's summons, 21.
- fraudulent conveyance, gift, &c., by debtor, 19.
- fraudulent preference by debtor, 22.
- fraudulent warrant of attorney or cognovit, 21.
- insolvency or bankruptcy in British Court out of Queensland, 22.
- presentation of debtor's petition in Queensland, or British Court out of it, 20, 22.
- remaining absent from colony with intent, &c., 19.
- must have arisen within six months before petition, 22.
- short statements of, in petition, 26.

ADJOURNMENT—

- of hearing of creditor's petition, 31.
- of matters into open court, 155.
- of meetings, 53, 77.
- of meetings for want of quorum, 175.

ADJUDICATION—

- must be made by Supreme Court or a judge thereof, 15.
- must be by petition, 15.

Petition by debtor—

- any person may petition against himself, 17.
- presentation is act of insolvency, 17, 20.
- form and attestation of, 18.
- majority of resident partners must sign, 18.
- may be presented at and filed in principal or district registry, 15.
- transmission of duplicate, 16.
- copy may be transmitted by telegraph, 16.
- provision as to sealing and office copies, 156.
- on presentation court proceeds to adjudicate, 18.
- lapses, if no adjudication after four weeks from filing, 160.
- on presentation of, receiver to take possession, 43.

Petition by creditor—

- creditor may petition on act of insolvency, 19.
- See* ACTS OF INSOLVENCY.
- debt must be £50 at least, 23.
- must be for a liquidated and subsisting sum, 23.

ADJUDICATION—

Petition by creditor—Continued.

- security must be valued, 23.
- form of petition and short statements, 26.
- presentation of and transmission by telegraph, 15, 16.
- lies against firm or any member, 33.
- must be on oath, 27.
- may be signed and sworn by partner, officer of company, or agent, 27, 28.
- affidavit of creditors not in partnership, 160.
- must be served and summons endorsed, 29.
- time for appearance same as writ of summons, 161.
- sealed copy to be served personally, 29, 167.
- substituted service may be directed, 167.
- notice of filing may be ordered to be gazetted, 167.
- service proved by affidavit, 167.
- if debtor absent, how served, 168.
- if no appearance debtor may be adjudicated, 29.
- adjudication may be made forthwith when grounded on declaration of inability, 162.
- debtor disputing to specify statements objected to, 161.
- on debtor's appearance set down for next chamber day, 30.
- petitioner's and debtor's affidavits may be transmitted by telegraph, 30.
- witnesses may be summoned, 37.
- further evidence may be given on hearing of petition, 161.
- on proof of debt and of act of insolvency court may adjudicate or may adjourn or dismiss petition, 31.
- hearing, when all respondents not served, 161.
- failure of petitioner to appear, 162.
- no ground for adjudication when debtor's summons dismissed, 162.
- consolidation of petitions, 113.
- precedence of petitions, 163.
- substitution of diligent petitioner, 113.
- if debt contested trial may be directed and proceedings stayed, 31.
- proceedings after trial, 163.
- if proceedings stayed on one petition, court may adjudicate on another, 32.
- court may order arrest of debtor and seizure of property before, 35–36.
- and may examine witnesses, 37.

Adjudication order—

- to specify time and place for debtor to deliver statement, 33.
- to appoint official trustee as trustee and appoint first meeting, 43.
- copy to be published in *Gazette* and locally, 34.
- advertisement of notice of, and time of meeting, 174.
- service of on insolvent, 173.

Annulment of order—

- any person affected may apply for annulment, 17.
- application must be made within a month, 164.
- copy order to be gazetted, 116.
- on payment in full or creditor's release, 99.
- on resolution of creditors on composition or scheme of settlement, 83.
- consequences of annulment, 116.

Effect of generally—

- relates back to completion of act of insolvency, 38.
- creditors only entitled to remedies provided by act, 39.
- insolvent entitled to discharge from custody after order, 39.
- As to vesting of property and property devolving on trustee. See PROPERTY, TRUSTEE.*

In liquidation—

- court may adjudicate during liquidation proceedings, 202.

ADVERTISEMENT—

- of substituted service of petition or debtor's summons, 223, 224.
- of order of adjudication and first meeting, 228.
- of appointment of trustee, 236.
- of meeting to authorise acceptance of composition, 241.
- of insolvent's last examination, 237.
- of order annulling adjudication, 242.
- of application for certificate, 243.
- of grant of certificate, 245.
- of dividends, 239.
- of application for transfer of proceedings, 172.
- of application against undischarged insolvent, 245.

In liquidation—

- notice of general meeting, 262.

Generally—

- Gazette* is evidence of, 120.
- other than trustee's must be sealed and certified, 120.
- to be filed by registrar, 157.
- false or unauthorised, a misdemeanor, 147.

ADVICE—

- trustee may apply to court for, 76.

AFFIDAVITS—

- common law rules apply to, 186.
- before whom to be sworn, 186.
- by agents. *See* ADJUDICATION, PROOF OF DEBT.
- contents of, may be transmitted by telegraph, 16.
- practice as to, on motions, 165, 166.
- to be filed by registrar and not delivered without order of court, 166.
- of trustee or clerk, of posting notices of meetings, sufficient, 176.
- on *creditor's petition*. *See* ADJUDICATION.
- on *debtor's summons*. *See* DEBTOR'S SUMMONS.
- in other particular cases, *see headings throughout Index*.

Forms of—

- for summoning debtor, 220.
- for summoning debtor in partnership, 221.
- on application to dismiss debtor's summons, 222.
- of justification, 226.
- of proof of debt, 229.
- of proof of debt by agent of a company, 230.
- in support of application for enforcement of composition, 249.
- in support of application for committal, 250, 251.
- of persons interested in composition for committal, 252.

In liquidation—

- in support of petition, 260.
- of debt annexed to notice, 261.
- on registration of resolution, 266.

AFTER ACQUIRED PROPERTY—

- certificate may be granted subject to conditions affecting, 109.

AGENT—

- insolvent's, must hand over moneys, &c., to trustee, 66.
- may be employed by trustee, 85.
- affidavit by. *See* ADJUDICATION, PROOF OF DEBT.

ALLOCATUR—

- must be signed and dated by taxing registrar, 193.

ALLOWANCE—

- may be made to insolvent, 93.

AMALGAMATION—

- of proceedings in partnership estates, 97.

AMALGAMATION—*Continued.*

of petitions, 113.

AMENDMENT—

of formal defects, 117.

of record of trial, 193.

informalities in resolutions, proofs or proxies in liquidation, 212.

of mistake in debtor's statement in liquidation, 213.

ANNULLING ADJUDICATION—

See ADJUDICATION.

APPAREL—

tools, &c., not exceeding £20, do not pass to trustee, 45.

APPARENT POSSESSION—

See ORDER OF DISPOSITION.

APPEAL—

Supreme Court is court of appeal, 8.

subject of appeal not less than £30, 8.

lies from judge in chambers, 7.

to be subject to general rules, 9.

notice of, to be within 21 days, 9.

to be entered with registrar, 185.

notice, how given, 185.

deposit on, 185

to be by motion and evidence on same, 185.

affidavits, what allowed thereon, 185.

to be filed and copies sent, 185.

transmission of file from district court, 186.

From trustee—

may be made against any act or decision of, 75.

against estimate of contingent liability, 88.

against decision on proof to be made within 14 days, 169

From trustee in liquidation—

on question of rejection of proof within 30 days, 215.

APPROPRIATION—

of pension, salary or income may be ordered, 61.

APPLICATIONS TO COURT—

See COURT, SUPREME COURT, and various headings throughout *Index*.

APPOINTMENT—

insolvent's powers of, may be exercised by trustee, 46.

of creditor's trustee and new trustee. See TRUSTEE.

APPRENTICE—

of insolvent, discharged from indenture after notice to trustee, 91.

refundment of portion of premium to, 91.

trustee may transfer indenture, 92.

ARBITRATION—

trustee may refer matters to, 82.

ARRANGEMENT—

trustee may with consent of creditors assent to scheme for, 83.

liquidation by. See LIQUIDATION BY ARRANGEMENT OR COMPOSITION.

ARREST—

insolvent under, on meane process or debt entitled to discharge, 39.

debtor about to abscond liable to, before or after filing of petition or debtor's

summons, 35, 37.

or if avoiding service, 37.

of debtor about to remove goods or concealing same, 37.

of debtor or person neglecting to appear for examination, 38.

how warrant to be addressed, 190.

of person having possession of insolvent's property, 69.

form of warrant, 246.

ARREST—Continued.

- application for commitment for contempt to be on affidavit, 190.
- mode of hearing, 191.
- form of warrant, 254.

ARTICLED CLERK—

- of insolvent, discharged from articles after notice to trustee, 91.
- refundment of portion of premium, 91.
- trustee may transfer articles, 92.

ASSEMBLY, LEGISLATIVE—

- seat of member of, becomes vacant on insolvency, 287.

ASSESSED TAXES—

- one year's, a preferential debt, 90.

ASSETS—

See PROPERTY.

ASSIGNEE (OFFICIAL)—

- office of, abolished, 150.
- of things in action may sue or defend in his own name, 120.

ASSIGNMENT—

- for benefit of creditors an act of insolvency, 19.
- bond fide* dealings under such assignment, good against trustee in insolvency, 62.
- by way of fraudulent preferences, void against trustee, 65.

ATTACHMENT—

- property of insolvent may be seized under warrant of, 71.
- form of warrant, 246.
- defeating, by concealment or removal of property, a misdemeanor, 146.

ATTESTATION—

- of debtor's petition, 18.
- of bond, 188.

ATTORNEY—

- of insolvent must hand over moneys and securities to trustee, 66.
- may be employed by trustee, 85.
- definition of, in construction of rules, 154.
- costs of, to be taxed, 178.
- scale of costs and fees of, 271.
- not to be changed when official trustee becomes trustee, 178.
- costs of, on court applications, 179.

Powers of—

- trustee may execute, 80.

AUCTION—

- trustee may sell by, 81.

AUCTIONEER—

- trustee being, cannot act without consent of committee of inspection, 179.

AUDIT—

- of accounts of trustee by accountant in insolvency, 123.
- by committee of inspection, 75.
- of accounts of trustees in liquidation, 133.

AUDITOR—

- of municipality vacates office on insolvency, 293.

BAIL—

- in cases where court commits summarily, 148.
- when on application of trustee, 148.

BANK—

- trustee to pay moneys into, 85.
- if none appointed by creditors committee of inspection or court to name, 177.

BANKER—

- of insolvent, must pay and deliver moneys and securities to trustee, 66.

BEDDING—

of insolvent, provision as to, 45.

BIDDING—

by mortgagee with leave of court, 87.

BILLS OF EXCHANGE—

although not due may be proved for, 87.

may be proved, less rebate, 89.

must be exhibited to trustee before payment of dividend, 182.

where holder unknown (*in liquidation*), 139.

BILLS OF SALE—

registered before 1st October, 1874, not affected by order and disposition clause, 46.

nor so affected if over machinery used in business, 46.

BOND—

by debtor disputing debtor's summons, 25.

by debtor disputing petitioning creditor's debt, 31.

to be given by official trustee, 42.

penalty of and sureties for, 216.

by creditor's trustee, 49.

security to be given in form of, 187.

penalty of, 187.

notice of sureties and objection, 187.

affidavit of sufficiency by sureties, 188.

attestation of, 188.

Forms—

of bond on stay of proceedings, 225.

of bond by creditor's trustee, 235.

BOOKS OF ACCOUNT—

of insolvent, trustee to take immediate possession of, 78.

not to be withheld from trustee, 66.

may be ordered to be seized, if debtor about to abscond or avoid service, 36.

or if he is suspected of being about to remove or conceal same, 37.

may be ordered to be produced before adjudication before examining court, 37.

insolvent not delivering up, guilty of misdemeanor, 141.

the like preventing production of, 142.

the like concealing or mutilating, 142.

the like making false entries in, 143.

the like omitting to keep, 144.

In custody of official assignee—

disposal of, 150.

of accountant. See ACCOUNTANT IN INSOLVENCY.

of registrars. See REGISTRAR.

of trustees. See TRUSTEE.

BOOK DEBTS—

trustee may sell, 81.

assignee of, may sue for in his own name, 120.

BREACH OF TRUST—

certificate of discharge does not release from, 110.

BREAKING OPEN—

of premises to attach insolvent's goods, 71.

BUSINESS—

of insolvent may be carried on by trustee, 80.

CA. RE.—

debtor entitled to discharge from, after adjudication, 39.

CA. SA.—

the like, 39.

CATTLE—

mortgage over, not affected by order or disposition clause, 46.

CATTLE—*Continued.*

provisions as to mortgages of, generally, 287-288.

CERTIFICATE OF APPOINTMENT OF TRUSTEE—

to be given by court on perfecting of security, 52, 177.

form of, 286.

is conclusive evidence of appointment, 52.

operates as a conveyance or assignment of property, 57.

In liquidation—

to be given by Registrar, 211.

form of, 286.

CERTIFICATE OF DISCHARGE—

application for, after last examination, or earlier with consent, 102.

application to be filed with registrar, 184.

form of application, 243.

twenty-one days' notice to be given, 184.

form of notice, 243.

notice to be given to trustee, 184.

application to be heard in court, 155.

insolvent must show (1) that he is not justly responsible, 103, 104, 105.

or (2) passing of special resolution, 105.

or (3) that gross realisation equals debts, 106.

but court may nevertheless suspend, 106.

application for, after twelve months, with assent of majority of creditors, 107.

meeting to obtain assent, how summoned, 184.

application for, at expiration of two years without consent, 107.

court may refuse or suspend in last-mentioned cases, 108.

application for, at end of three years with consent of majority of creditors, 108.

any, may be granted conditionally, 109.

payments, contracts, &c., to influence consent of creditors, void, 109.

form of court's memo. of application, 244.

to be signed and sealed by Registrar, 110.

form of, generally, 244.

to take effect after expiration of time limited for appeal, 110.

to be gazetted, 184.

form of notice, 245.

Effect of—

does not release fraudulent debts or breaches of trust, 110.

releases from all other provable debts, except debts due to the Crown, 110.

does not release joint debtor with insolvent, 111.

is evidence of insolvency and validity of proceedings, 111.

status of undischarged insolvent, 111, 112.

form of statement to be filed by such insolvent, 189.

registrar to appoint day for hearing for his discharge, 190.

form of notice, 245.

provision, where any of his creditors dead or not to be found, 190.

CERTIFICATE OF PRELIMINARY PROOF—

form of, 48.

may be transmitted by telegraph, 48.

entitles creditor to vote, 48.

CHAIRMAN—

principal registrar is, of first meeting, in his absence other person may be elected, 50.

at subsequent meetings, to be chosen by creditors, 77.

has power to adjourn, 53, 77.

In liquidation—

election of, 202.

proofs to be handed to, 203.

to hand same to person authorised to register resolution, 205.

CHAMBERS—

- any judge may sit in, 7.
- examinations under section 164, and certificate applications not to be heard in, 155.
- matters in, may be adjourned into court, 155.

CHEQUES—

- dividends may be transmitted by, 182.
- must be exhibited before payment of dividend, 182.

CHILDREN—

- settlements on, when void as against trustee, 63.

CHOSES IN ACTION—

- trustee may sue for, in his official name, 78.
- assignee of, may sue or defend in his own name, 120.

CIVIL SERVANT—

- appropriation of pay or pension of, 61.
- practice as to, 191.
- form of order, 248.

CLERK—

- salary of, how far preferential, 91.
- appropriation of pay or salary of, 61.
- practice as to, 191.
- form of order, 249.

CLOSE OF INSOLVENCY—

- court may order, on trustee's report, 101.
- form of report, 240
- form of order, 240
- order to be gazetted, 102.
- repeal of part of section 166 relating to, 153.
- trustee to deliver list of outstanding property at, 181.

CLOSE OF LIQUIDATION—

- may be fixed by special resolution, 133.

COGNOVIT ACTIONEM—

- fraudulent, is an act of insolvency, 21.
- if fraudulent, avoided, 64.

COMMENCEMENT OF INSOLVENCY—

- definition of, 38.

COMMISSION—

- of trustee. *See* TRUSTEE.

COMMISSIONS—

- court may issue for taking evidence, 10.

COMMITMENT—

- is to be to such prison as court thinks expedient, 13.
- court may commit insolvent summarily, or direct a prosecution, 148.
- for contempt. *See* CONTEMPT.
- application for, must be on affidavit, 190.
- form of application for, 250.
- form of affidavit in support, 250-252.
- form of notice of application in case of composition, 252.
- form of warrant, 254.
- form of order for discharge, 255.

COMMITTEE OF INSPECTION—

- not exceeding five appointed at first meeting, 49.
- may be authorised to appoint trustee, 49.
- to superintend trustee's administration, 49.
- to audit trustee's accounts and determine dividend, 75.
- any member may resign in writing, or may be removed by creditors at meeting, 58.
- vacancy in office, how filled up, 58.

COMMITTEE OF INSPECTION—Continued.

- continuing members may act during vacancy, 58.
- defect or irregularity in appointment of, not to vitiate acts, 59.
- to be convened once at least every two months, 75.
- member of, may summon general meeting of creditors, 77.
- quorum of, when not fixed by creditors, 182.
- resolutions of, how passed, 182.

Sanction of, necessary for—

- mortgaging or pledging insolvent's property, 81, 82.
- allowing insolvent to manage estate, 82.
- bringing or defending actions, 82.
- referring disputes to arbitration, 82.
- compromising or arranging disputes, 82, 83.
- dividing property amongst creditors in existing form, 83.
- employing short-hand writer, 83.
- requiring creditor to give up security, on payment of its value, 94.
- making applications to court, to justify law costs, 179.
- trustee acting as auctioneer, 179.

In liquidation. See LIQUIDATION.**COMPANY (corporate or registered)—**

- not liable to be adjudged insolvent, 14.
- petition by, and verification of, 27.
- debtor's summons by, 157.
- proof of debt by, 114.
- form of affidavit of debt by officer of, 230.

COMPOSITION—*Under section 134—*

- trustee may accept, with sanction of creditors, 83.
- court may annul adjudication, 84.
- provisions of, may be enforced by court, 84.
- court may stay proceedings pending negotiations for, 115.

*Liquidation by arrangement or composition. See LIQUIDATION.***COMPOUNDING—**

- with petitioning creditor, to prejudice of others, an act of insolvency, 20.

COMPROMISES—

- trustee has power to make, 82.

CONCEALING—

- property, by insolvent, a misdemeanor, 141, 145.
- books or documents, the like, 142.
- property, by persons other than insolvent, a misdemeanor, 146.
- examination of witnesses for discovery of property, 69.
- seizure of concealed property by warrant, 71.
- form of search warrant, 245.
- form of warrant of seizure, 246.

CONSENT TO CERTIFICATE—*See CERTIFICATE OF DISCHARGE.***CONSOLIDATION—**

- two or more petitions may be ordered to be consolidated, 113.
- practice as to, 163.

CONSUL—

- may take affidavits, 186.

CONTEMPT—

- banker, attorney or agent of insolvent, not delivering up moneys or securities, guilty of, 66.
- for refusal to answer to satisfaction of examining court, 71.
- insolvent wilfully failing to perform duties, guilty of, 74.

CONTEMPT—Continued.

- disobedience of order for enforcement of composition, or scheme of arrangement is, 84.
- the like in compositions under section 204, 139.
- for practice. *See* COMMITMENT.

CONTINGENT—

- debts and liabilities may be proved, and value estimated, 87, 88.
- appeal against valuation, 88.
- definition of liability, 88, 89.

CONTRACTS—

- in consideration of marriage, when void, 63.
- amounting to fraudulent preferences, void, 64.
- made in good faith, protected, 67, 68.
- made to influence creditors in reference to certificate, void, 109.
- unprofitable, may be disclaimed by trustee, 78, 79.
- proof in respect of distinct contracts, 93.

CONVEYANCE—

- to trustee for benefit of creditors, is act of insolvency, 19.
- the like fraudulent conveyance, 19.
- certificate of appointment of trustee, operates as, 57.
- by way of settlement, when void, 63.
- operating as fraudulent preference, void, 64, 65.
- of insolvent's land out of Queensland may be ordered, 66.
- by way of mortgage may be redeemed, 86.

COPIES (OFFICE)—

- in case of transfer of proceedings, 9.
- rule as to providing, generally, 156.

CORPORATION—See COMPANY.**COSTS—**

- power of court to award, 10.
- and to make rules regulating, 14.
- of petitioning creditor, provision for, 32.
- in case of insufficient joint or separate estate, 178.
- trustee's must be taxed, 178.
- of attorney or counsel on applications, 179.
- of proof to be borne by creditor, 181.
- deposit for, on appeal, 185.
- witnesses expenses to be tendered, 188.
- orders for, to be sealed, &c., by registrar, 192.
- to be taxed on production of office copy order, 193.
- in liquidation proceedings, to be paid by trustee, 210.
- when insolvency occurs during liquidation, 210.
- scale of attorney's, 271.
- the like of office fees, 275.
- fees to be collected by stamps, 216.

COURT, DISTRICT—

- means a court held under the *District Courts Act of 1867*, 2.
- may be appointed a court in insolvency, 6.
- transfer of proceedings to. *See* TRANSFER OF PROCEEDINGS.
- judge has powers of Supreme Court judge in equity, 7.
- judge may act for any other district court judge, 8.
- sittings, when to be held, 8, 193.
- appeal from order. *See* APPEAL.
- jurisdiction of, in criminal offences, 149.
- must have a seal, 119.

COURT, EXAMINING—

- means any court or magistrate conducting examinations, 3.
- debtor or witness may be examined before, prior to adjudication, 37.

COURT, EXAMINING—*Continued.*

- may issue warrant for arrest, 38.
- and for seizure of books or documents, 38.
- may examine insolvent, wife, or witnesses, in reference to property or dealings, 69.
- and issue warrant for apprehension, 70.
- may commit for contempt, 71.
- to transmit depositions to court, 118.
- may commit insolvent summarily for any offence, 148.
- See* AMENDMENT ACT, p. 152, AND COMMITMENT.

COURT, SUPREME—

- is court of insolvency, except otherwise provided, 6.
- single judge may exercise powers of, 6.
- is court of appeal, 8.
- may transfer cases to district courts, 9.
- may make general rules, 13.
- adjudications must be made by, or a judge thereof, 15.
- judge of, may grant debtor's summons, 24.
- for practice of, on debtor's summons. *See* DEBTOR'S SUMMONS.
- for practice of, to obtain adjudication. *See* ADJUDICATION.
- may cause absconding debtor to be arrested, 35, 36, 37.
- See* ABSCONDING DEBTORS.
- examination by, of witnesses before adjudication, 37.
- may discharge debtor from custody, 39.
- may restrain actions, and appoint receiver or manager, 40.
- powers of, in respect of trustees. *See* TRUSTEE.
- powers of, in respect of property. *See* PROPERTY.
- powers of, in respect of certificate. *See* CERTIFICATE OF DISCHARGE.
- powers of, in respect of commitment. *See* COMMITMENT, CONTEMPT.

"COURT, THE"—

- means Supreme Court, or other court having jurisdiction in the insolvency, 3.
- judge of, may sit in chambers, 7.
- appeals from orders and decisions of. *See* APPEAL.
- special case may be stated to, 10.
- may take evidence in various modes, and award costs, 10.
- has power to decide all questions of priorities, 10.
- may direct questions to be tried, 11.
- orders and warrants of, how enforced, 12.
- commitment by. *See* COMMITMENT, CONTEMPT.
- applications to. *See various heads throughout Index.*

COVENANTS—

See CONTRACTS.

CREDIT—

- fraudulently obtaining, a misdemeanor, 145.

"CREDITOR"—

- includes partners, persons jointly interested, or joint-stock companies, 4.
- secured*, meaning and definition of, 4.
- See* SECURED CREDITOR.

CREDITORS (present or assembled)—

- include creditors represented by authorised representatives, 4

CREDITORS (generally)—

- petition by. *See* ADJUDICATION, PETITION
- proof of debt by. *See* PROOF OF DEBT, DIVIDEND.
- may vote personally or by proxy, 51.
- ordinary resolution of, means majority in value, 51.
- special resolution of, means majority in number and three-fourths in value, 52.
- debts not exceeding £10 only count in value, 5.
- may appoint trustee or trustees at first meeting, and fix remuneration, 48, 55.

CREDITORS (generally)—Continued.

must declare security to be given by trustee, 49.

may appoint committee of inspection, 49.

See COMMITTEE OF INSPECTION.

may give directions as to administration of property by trustee, 50.

may fill up vacancy in office of trustee, or committee of inspection, 55, 58.

may remove trustee or committee, 56, 58.

may empower trustee to do acts, without consent of committee of inspection, 59.

consent of, to certificate. *See* CERTIFICATE OF DISCHARGE.

CROPS—

See LIEN ON CROPS.

DEATH—

of trustee, provision for filling vacancy, 55.

the like of member of committee of inspection, 58.

of insolvent, does not cause abatement of proceedings, 115.

of insolvent, wife, or witness, does not invalidate evidence, 119.

provision for remuneration of services of deceased trustee, 180.

DEBT—

of petitioning creditor. *See* ADJUDICATION, PETITION.

proof of *See* PROOF OF DEBT.

preferential, 90, 91.

secured. *See* SECURED CREDITOR.

DEBT, PROVABLE—

what it includes, 3.

DEBTOR—

examination of, prior to adjudication, 37.

adjudication of. *See* ADJUDICATION.

duties and liabilities of, when adjudicated insolvent. *See* INSOLVENT.

DEBTOR'S SUMMONS—

may be granted by judge of Supreme Court, 24.

debtor may apply to dismiss, 25.

question of indebtedness may be directed to be tried, 25.

arrest of debtor after granting of, 35.

by public company, to be sued out by officer or agent, 157.

affidavit may be made by director or officer, 157.

creditor must file affidavit of truth of debt before granting, 158.

to be served personally, and sealed copy delivered, 167.

substituted service may be directed, 167.

notice of granting may be advertised, 167.

service of, how proved, 167.

provision as to sealing particulars, 158.

time for payment, same as writ of summons, 158.

indorsements on, 158, 159.

registrar to fix time and place for dismissal of, 159.

practice as to dismissal, 159.

as to prosecuting claim, when proceedings stayed on summons, 159.

neglecting to satisfy, if amount not less than £50, is an act of insolvency, 21.

no adjudication when dismissed, 162.

forms in connection with. *See* FORMS.

DECLARATION OF INABILITY TO PAY DEBTS—

may be filed, and is an act of insolvency, 20.

to be dated, signed, and witnessed, 157.

adjudication may be made forthwith by consent, 162.

form of, 220.

DECREE—

failing to point out property to satisfy, is an act of insolvency, 21.

insolvent in custody under, entitled to discharge, 39.

DEEDS—

insolvent to execute, on application of trustee, 66.
to be delivered by banker, attorney, or agent, to trustee, 66.
exempted from stamp duty, 121.
See PROPERTY.

DEFECTS—

formal, may be remedied by court, 117.
provision as to informalities in resolutions, proofs, or proxies in liquidation, 212.

DELIVERY—

fraudulent, is an act of insolvency, 19.
amounting to fraudulent preference, void, 64, 65.
fraudulent, is a misdemeanor, 145.

DEPARTURE—

from colony, or from dwelling-house, with intent, &c., is an act of insolvency, 19.

DEPOSIT—

may be given in lieu of security, 187.
notice of, to be given by registrar, 188.

DEPOSITS AND PLEDGES—

may be redeemed by trustee, 86.

DIRECTIONS—

creditors may give to trustee at first meeting, 50.
and at any general meeting, 74.
trustee may apply for direction of court, 76.
practice therein, 178.

DISCHARGE OF INSOLVENT—

See CERTIFICATE OF DISCHARGE, LIQUIDATION.

DISCLAIMER—

of onerous covenants, or property by trustee, 78.

DISCOVERY OF PROPERTY—

steps to obtain. *See* PROPERTY, TRUSTEE.
requisites of application to court for, 189.

DISMISSAL—

of debtor's summons or petition. *See* DEBTOR'S SUMMONS, PETITION.

DISPOSITION—

provision as to goods and chattels in disposition of insolvent, 46.

DISTRESS—

for rent, stayed after adjudication, or after debtor's petition, 92.

DISTRICT COURT—

See COURT.

DISTRICT RECEIVER—

appointment of, 42.
to take possession of property, 43.

“DISTRICT REGISTRAR,” AND “REGISTRY”—

definition of, 3.

DIVIDENDS—

committee of inspection to determine, 95.
to be declared from time to time, 95.
provision to be made for creditors resident at a distance, 95.
creditors not proving before declaration of dividend, may come in, 96.
final dividend when all property realised, 96.
secured creditor entitled to, on balance, after valuing security, 94.
court will order trustee to pay, 97, 183.
on joint and separate properties to be declared together, 98.
no action to be brought for, 97.
notice of intention to declare, to be given, 182.

DIVIDENDS—Continued.

- notice of declaration to be gazetted and advertised, 182.
- notice of dividends to be given, 96.
- dividends may be transmitted by registered letter, 182.
- bills of exchange, &c., must be exhibited on payment of, 182.
- practice as to dividends, to secured creditors, 183.
- unclaimed, to be accounted for and paid over, 126.
- unclaimed after five years, vest in Crown, 127.

In liquidation—

- trustee to give notice to creditors to come in and prove, 214.
- debts must be proved before receiving, 214.
- rejected claims excluded from, 215.
- what creditors entitled to, 215.

DOCUMENTS—

See BOOKS, DEEDS, PROPERTY.

DWELLING HOUSE—

- departing from, or beginning to keep house with intent, &c., are acts of insolvency, 19, 20.

ELECTION OF TRUSTEE AND COMMITTEE OF INSPECTION—

See TRUSTEE and COMMITTEE OF INSPECTION.

EMBEZZLING—

- part of estate a misdemeanor, 146.

ENFORCEMENT—

- of composition. *See* COMPOSITION.
- of orders and warrants, 12. *See* COMMITMENT.

ENTRY—

- making false, a misdemeanor, 143.

EQUITY—

- every judge in insolvency has powers and jurisdiction of judge in, 7.

EQUITABLE MORTGAGE—

- land subject to, may be sold, 86.

ESTATE BOOK—

- to be kept by trustee, 196.
- form of, 257.

EVIDENCE—

- mode of taking, 10.
- examination to be in writing and signed, 194.
- insolvent must give, though criminating, 70.
- examination of insolvent generally. *See* INSOLVENT.
- certified copy of minutes, is evidence, 117.
- and sealed copy of proceedings, 118.
- and evidence or depositions taken before examining court, 118.
- may be taken by shorthand writer, 119.
- remuneration of shorthand writer, 194.
- district court and district registry to have a seal, 119.
- death of witness does not invalidate evidence, 119.
- Gazette*, evidence of advertisement, 120.
- Gazette*, evidence of adjudication, 34.
- Gazette*, evidence of order closing insolvency, 102.
- Gazette*, evidence of order annulling adjudication, 116.
- certificate of discharge, evidence of insolvency proceedings, 111.
- of calling meeting, what is, 176.
- on appeal, practice as to, 185.

In liquidation—

- registration of resolution is evidence of proceedings, 135.

EXECUTION—

- failing to satisfy not less than £50, an act of insolvency, 20.

EXECUTION—*Continued.*

- proceeds of, in respect of sum not less than £50 to be retained by sheriff for 14 days, 60.
- proceeds of, lawfully paid over, protected, 62.
- executed in good faith, 69.
- writs of. *See* WRITS OF EXECUTION.

EXPENSES—

- of registrar, provision for, 120.
- of prosecutions under Act, 149.
- of witnesses to be tendered, 188.

EXPUNGING OR REDUCING PROOF—

- See* PROOF OF DEBT, TRUSTEE.

FACT—

- questions of, may be tried before a jury or by the court, 11.

FALSE—

- advertisement, insertion of, a misdemeanor, 147.
- claim, making of, the like, 146.
- debt, omission by insolvent to inform trustee of, the like, 142.
- entries by insolvent, the like, 143.
- pretences, obtaining credit by, the like, 145.
- representations to obtain consent of creditors, the like, 144.

FALSIFYING—

- books, a misdemeanor, 142.

FEEES—

- power of Supreme Court to fix, by rule, 14.
- scale of attorney's, 271.
- scale of office, 275.
- to be collected by stamps, 216.

FELONY—

- debtor absconding with property to value of £20 and upwards, guilty of, 145.

FICTITIOUS LOSSES—

- insolvent stating, guilty of misdemeanor, 143.

FINAL DIVIDEND—

- See* DIVIDEND.

FOREIGN COUNTRY—

- insolvency or bankruptcy in British court out of Queensland, an act of insolvency, 22.
- so is presentation of petition in such court, 22.
- insolvent may be ordered to convey property in, 66.
- provision for creditors at a distance, on declaration of dividend, 95.
- provision for creditors in, shewing cause against resolution in liquidation, 214.

FORFEITURE—

- of unmarketable shares by trustee, 78.

FORMS—

- rule as to, 155.
- schedule of, 217.

Action—

- restraining, after insolvency, 229.

Adjudication—

- order of, 228.
- notice of, 228.
- application to annul, under section 134, 242.
- order thereon, 242.
- notice, 242.

Affidavit—

- for summoning a debtor, 220.
- for summoning debtors in partnership, 221.

FORMS—

Affidavit—Continued.

- on application to dismiss debtor's summons, 222.
- of justification, 226.
- for proof of debt, with or without security, 229.
- for proof of debt by agent of a company, 230.
- in support of application for enforcement of composition, 249.
- in support of application for committal, 250, 251.
- of person interested in composition for committal, 252.

In liquidation—

- in support of petition, 260.
- of debt annexed to notice, 261.
- on registration of resolution, 266.

Bond—

- on stay of proceedings on petition, 225.
- of trustee, 235.

Certificate—

- of appointment of trustee, 236.
- the like, in liquidation, 266.

Certificate of discharge—

- application for, 243.
- notice of, 243.
- memorandum of application, 244.
- form of, 244.
- notice of granting, 245.

Committal—

- notice of application for, under section 122, 252.
- the like, under section 111, 252.
- the like, under section 134, 253.
- orders of, as above, 253, 254.
- warrant for, 254.

Composition—

- notice of meeting to authorise trustee to accept, 241.
- order staying proceedings, 241.

Debt—

- affidavit for proof of, 229.
- the like, by agent of company, 230.
- order to pay, 237.
- notice (in liquidation) to creditors to come in and prove, 268.
- writ of *fi. fa.* for payment of, when admitted, 268, 269.
- the like, with costs, 269.
- writs of *elegit* for similar purpose, 270.

Debtor's summons, 221.

- affidavit in support, 220.
- the like in the case of debtors in partnership, 221.
- notice of substituted service of, 223.
- affidavit, on application to dismiss, 222.
- order on application to dismiss, 222.

*Debtor's summons book, 257.**Declaration—*

- of inability to pay, 220.

Directions—

- application of trustee for, 240.
- order thereon, 241.

Discharge of debtor—

- application for certificate, 243.
- memorandum of application, 244.
- form of, 244.

FORMS—

Discharge of debtor—Continued.

notice in *Gazette*, 245.
from custody for contempt, 255.

In liquidation—

resolution for, 267.
report of trustee, 267.
form of discharge, 267.

Dividend—

notice in *Gazette* of intended, 239.
application by creditor for order for, 239.

Estate book, 257, 258.*Evidence—*

See AFFIDAVIT, ante.
subpoena, 247.
summons under section 144, 248.
warrant to apprehend person summoned under section 114, 255.

Execution—

search warrant, 245.
warrant of seizure, 246.
warrant against debtor about to quit colony, 246.
the like of committal, 254.
the like to apprehend a person summoned under section 114, 255.
writ of *fi. fa.* for payment of debt admitted due, 268.
the like for payment by insolvent, 269.
the like for debt and costs, 269.
the like for costs, 270.
writ of *elegit* for payment of debt admitted due, 270.
the like for debt and costs, 270.
the like for costs, 270.

Income—

notice to insolvent under section 104, 248.
order setting aside, under section 104, 248.

Insolvency book, 256.*Last examination—*

notice for, 237.
memorandum of, 237.

Liquidation or composition—

petition for, 259.
affidavit in support, 260.
notice to creditors of general meeting, 260.
affidavit of debt to be annexed, 261.
request, 262.
notice for *Gazette*, 262.
order changing place of meeting, 262.
nomination of receiver or manager, 263.
list of creditors assembled at general meeting, 263.
resolution for liquidation, 264.
the like for composition, 264.
notice of second general meeting, 265.
resolution at, 265.
list to be added to statement of affairs, 266.
affidavit on registration of resolution, 266.
certificate of trustee's appointment, 266.
resolution for debtor's discharge, 267.
report of trustee on debtor's discharge, 267.
debtor's discharge, 267.
notice to creditors to come in and prove, 268.

FORMS--

Liquidation or composition—Continued.

notice of rejection of claim, 268.

Meeting--

notice of first, and order for, 228.
minutes of proceedings at first, 230.
list of creditors assembled at, 231.
notice of, on resignation of trustee, 238.
minutes of such meeting, 238.
notice of, for acceptance of composition, 241.
in liquidation. *Ante.*

Notice—

by debtor disputing petition, 224.
of sureties, 226.
of substituted service of petition or summons, 223, 224.
of adjudication and first meeting, 228.
of appointment of trustee, 236.
of last examination, 237.
of meeting on trustee's resignation, 238.
of intended dividend, 239.
of meeting to authorise trustee to accept composition, 241.
of annulling insolvency, 242.
of application for certificate, 243.
the like when debtor has paid 20s. in the pound, 245.
of grant of certificate, 245.
for enforcement of debt against undischarged insolvent, 245.
to insolvent under section 104, 248.
of application for committal, 252, 253.
See also LIQUIDATION.

Order—

on application to dismiss debtor's summons, 222.
to stay proceedings on petition, 224.
dismissing petition, 227.
adjudication, 228.
annulling adjudication, 242.
for general meeting of creditors, 228.
to pay debt, 237.
closing insolvency, 240.
on application for directions, 241.
to stay proceedings on composition, 241.
for enforcement of composition, 250.
setting aside pension, 248.
the like salary or income, 249.
of committal, 253, 254.
for discharge from custody on contempt, 255.
to Postmaster-General, 255.

Pension--

order setting aside, 248.

Petition--

by debtor, 18.
by creditor, 26.
short statements of grounds for, 26, 27.
notice of substituted service of petition, 223, 224.
the like disputing statements in, 224.
order staying proceedings on, 224.
bond on stay of proceedings, 225.
notice of sureties, 226.
affidavit of justification, 226.

FORMS—

Petition—Continued.

dismissal of petition, 227.

the like where adjudication on subsequent petition, 227.

adjournment of, 227.

Postmaster-General—

order on, 255.

Proof of debt—

affidavit for, with or without security, 229.

affidavit for, by agent of a company, 230.

*Prozy, 230.**Register of insolvencies, 256.**Report—*

of trustee for closing insolvency, 240.

order on report, 240.

Salary—

order setting aside, 249.

notice to insolvent, 248.

*Statement of affairs, 232.**Subpena, 247.**Summons —*

under section 114, 248.

Transfer of proceedings—

order for, 236.

certificate of judge for, 236.

Trustee—

report of appointment of, 232.

certificate of appointment, 236.

notice of appointment of, 236.

bond of, 235.

notice of meeting on resignation of, 238.

minutes of meeting, 238.

report of appointment of, 238.

report of trustee for closing insolvency, 240.

order on report, 240.

application for directions by, 240.

order on application, 241.

application for release by, 243.

application by, for committal of insolvent, 250.

affidavit of, under section 111, 251.

annual return to be made by, 259.

Warrant—

search warrant, 245.

of seizure, 246.

for arrest of absconding debtor, 246.

of committal for contempt, 254.

to apprehend person summoned under section 114, 255.

GAZETTE—

conclusive evidence of adjudication, 34.

evidence of all advertisements, 120.

insertion of false or unauthorised notice in, a misdemeanor, 147.

filing of advertisements in, by registrar, 156.

accountant to register all notices in, 195.

GENERAL RULES—

of 1st Oct, 1874, 154.

of 5th Sept., 1876, 277.

of 17th Aug., 1877, 278.

of 29th Aug., 1878, 279.

GENERAL RULES—*Continued.*

of 12th Dec., 1879, 280.

GIFT—

fraudulent, is an act of insolvency, 19.
voluntary, in favor of wife or children, when void, 63.
amounting to fraudulent preference, void, 64.
other fraudulent gifts, 65.
in fraud is a misdemeanor, 145.

GOODS AND CHATTELS—

in possession, order, or disposition of insolvent at commencement of insolvency pass to creditors, 46.

generally. *See* PROPERTY.

GOODWILL OF BUSINESS—

of insolvent, trustee may sell, 81.

GUARANTEE ASSOCIATION OR SOCIETY—

security of, may be given in lieu of bond or deposit, 187.

HALF PAY—

See PENSION.

HOUSE—

departing from, or beginning to keep, with intent, &c., acts of insolvency, 19, 20.

IMPRISONMENT—

discharge of debtor from, 39.

See COMMITMENT, OFFENCES.

INABILITY TO PAY—

declaration of. *See* DECLARATION OF INABILITY.

INCOME—

application for appropriation of, 61.
notice to be given, 191.
form of, 248.
form of order, 249.
order may be rescinded or varied, 191.

INDICTMENT—

what deemed sufficient statement in, 149.

INFORMALITIES—

formal defects may be remedied by the court, 117.
in resolution, proofs, or proxies, 212.

IN FUTURO—

debt of petitioning creditor payable, 24.
debt payable, may be proved with rebate of interest, 89.

INQUIRIES—

as to amount due to secured creditor, 172.

INSERTING ADVERTISEMENT—

without authority, or falsely, a misdemeanor, 147.

INSOLVENCY—

acts of. *See* ACTS OF INSOLVENCY.

commences at time of completion of act on which adjudication obtained, 38.

petition for, and adjudication proceedings. *See* ADJUDICATION, PETITION.

court may order during liquidation proceedings, 202.

provisions as to such order, 210.

administration of property during. *See* PROPERTY, TRUSTEE,

jurisdiction of court in. *See* SUPREME COURT, THE COURT, DISTRICT COURT,

EXAMINING COURT, under heading "COURT."

certificate of discharge in. *See* CERTIFICATE OF DISCHARGE.

of creditors' trustee causes vacancy, 56,

of trustee, subject to *Trustees and Incapacitated Persons Act*, effect of, 127.

of member of committee of inspection causes vacancy, 59.

of legislative councillor, 289.

INSOLVENCY—Continued.

- of member of the legislative assembly, 287.
- of municipal councillor or auditor, 292.
- evidence of insolvency proceedings. *See* EVIDENCE.

INSOLVENCY ACTS—

- Act of 1864*, repealed, 5.
- disposal of records under, 150.
- the like of unclaimed dividend fund, 150.
- Act of 1874*, commencement of, 1st October, 1874, 2.
- Amendment Act of 1876*, 152.

INSOLVENT—

- proceedings necessary to obtain adjudication of. *See* ADJUDICATION, PETITION.
- may be ordered to execute conveyances of property out of colony, 66.
- to attend for examination before court, to discover his estate, trade, or dealings, 69.
- to answer questions, though criminating, 70.
- to aid in realisation and distribution of estate, 73.
- to deliver statement to trustee, 33, 73.
- to deliver inventory and list, 73.
- to submit himself for examination, 73.
- to attend meetings of creditors and wait on trustee when requested, 73.
- to execute all necessary documents and instruments, 73.
- guilty of contempt for non-performance of duty or not delivering property, 74.
- may be appointed to manage estate, 82.
- may apply to expunge or reduce proof, 90.
- may receive allowance, 93.
- last examination of. *See* LAST EXAMINATION.
- certificate of, *proceedings to obtain and effect of*. *See* CERTIFICATE OF DISCHARGE.
- what property of, passes to creditors. *See* PROPERTY.
- what actions he may continue. *See* ACTIONS.
- status of undischarged insolvent, 111, 112, 189, 190.
- entitled to surplus after payment of debts, 96.
- offences by. *See* OFFENCES.
- committal of, by court for offences, 148.
- trustee under *Trustees and Incapacitated Persons Act*, 127.

INSPECTION—

- See* COMMITTEE OF INSPECTION.

INSURANCE—

- protection of policies, 203.

INTENTION—

- to defeat or delay creditors, necessary ingredient in certain acts of insolvency, 19.

INTEREST—

- trustee liable to pay, on moneys retained, 86.
- rebate of, in respect of debts payable in futuro, 89.
- rate of rebate, 170.
- trustee may allow, in cases where jury can give, 93.

INTERPRETATION CLAUSE—

- of Act, 2, 3, 4,
- of rules, 154.

INTERROGATORIES—

- court may take evidence on, 10.
- examining court may examine by, 71.
- in appointment of trustee or committee of inspection does not invalidate acts, 59.
- formal defects do not invalidate proceedings, 117.

IRREGULARITY—

informalities in resolutions, proofs, &c., in liquidation, do not necessarily invalidate, 212.

statement of debts in liquidation may be corrected, 213.

ISSUES—

of fact may be tried before a jury or by the court, 11.

JOINT ADJUDICATION—

majority of resident partners may petition for insolvency of partnership, 18.

may be obtained by creditors of partnership, 33.

nature of statement to be rendered by partners, 174. *See* ADJUDICATION, PARTNERS.

JOINT CONTRACTOR—

with insolvent may sue or be sued without joinder of insolvent, 121.

proof in reference to, in certain cases, 93.

JOINT CREDITORS—

See ADJUDICATION, LIQUIDATION, PARTNERS.

proof by, 97.

JOINT AND SEPARATE ESTATES—

proceedings as to, 97, 98.

JUDGE—

See SUPREME COURT, THE COURT, THE DISTRICT COURT, under heading "COURT."

JUDGMENT—

failure to point out property to satisfy, is act of insolvency, 21.

JURISDICTION OF COURT—

See SUPREME COURT, THE COURT, EXAMINING COURT, under heading "COURT."

JURY—

questions of fact may be tried by, 11.

mode of summoning and challenging, 12.

what constitutes record for trial by, 193.

common law rules apply to trial by, 193.

record of trial, how endorsed, 193.

JUSTICES OF THE PEACE—

may attest debtor's petitions, 18.

may take affidavits in insolvency, 186.

proof of debt may be sworn before, 114.

have summary jurisdiction in certain offences, 146-147.

KEEPING HOUSE—

by debtor, with intent to defeat or delay creditors, an act of insolvency, 19.

LABORER—

wages of, how far preferential, 91.

LAND—

burdened with onerous covenants, may be disclaimed by trustee, 78.

LANDLORD—

distress by, stayed after adjudication or debtor's petition, 92.

claim of, how far preferential, 92.

proof by, for proportionate part of rent, 92.

LAST EXAMINATION—

insolvent to attend in court to pass, 99.

may be held before police magistrate, 100.

may be adjourned, 100.

not to be held before police magistrate at Brisbane or Bowen, 153.

fourteen days' notice to be given, 175.

notice to be given to trustee, 278.

forms connected with. *See* FORMS.

LEASEHOLDS—

may be disclaimed by trustee, 78.

- LEASEHOLDS—*Continued.*
 may be occupied by him for three months, 80.
- LEGISLATIVE ASSEMBLY—
 insolvency of member of, 287.
- LEGISLATIVE COUNCIL—
 the like, 289.
- LETTERS—
 addressed to insolvent may be ordered to be delivered to trustee, 73.
 form of order, 255.
 notice of meetings may be given by, 175.
 dividends may be sent by, 182.
- LIABILITY—
 definition of, 88, 89.
 contingent, may be proved and value estimated, 87-88.
 appeal against valuation, 88.
- LICENSE, PUBLICAN'S—
 provisions as to, on insolvency, 294.
- LIEN—
 no claim for, on insolvent's books, 66.
 on wool or crops not within order or disposition provision, 46.
- LIMITATION—
 of time for disclaiming property by trustee, 79.
 of actions for anything done under Act, 121
- LIMITED COMPANIES—
See COMPANIES, CORPORATIONS.
- LIMITED PARTNERSHIPS—
 under *Mercantile Act of 1867*, not liable to be adjudged insolvent, 14. *See*
 also *Mercantile Act*, 287.
- LIQUIDATION BY ARRANGEMENT OR COMPOSITION—
 proceedings to be instituted by petition and affidavit, 198.
 form of petition and affidavit, 259, 260.
 debtor to state amount of debts in petition, 201.
 meeting to be summoned within one calendar month, 198.
 meeting to be summoned by notice, 199.
 form of notice, 260.
 provisions as to summoning, 199.
 notice to be gazetted, 199.
 form of, 262.
 notice to be posted 14 days before meeting, 199.
 meeting may be changed, 199.
 form of order changing, 262.
 actions may be restrained after petition, 200.
 receiver may be appointed after petition, 200.
 appointment of receiver, 201.
 appointment of receiver may be cancelled, 201.
 receiver entitled to custody of books and effects, 202.
 receiver must permit books to be inspected, 202.
 when receiver's duties terminate, 211.
 receiver bound to account, 211.
 court has power over receiver, 212.
 court may direct transfer of proceedings to district court, 209.
 court may adjudicate debtor insolvent during proceedings, 202.
 provisions in event of insolvency occurring, 210.
 costs of insolvency proceedings, 210.
 chairman of meetings to be elected by majority, 202.
 debts to be proved, and proxies appointed as in insolvency, 203.
 form of affidavit, 261.
 all debts provable in insolvency to be allowed, 203.

LIQUIDATION BY ARRANGEMENT OR COMPOSITION—Continued.

- proof and proxies to be handed to chairman, 203.
- proof by secured creditor, 203.
- creditor may withdraw proof and retire from meeting, 203.
- debtor to produce statement at meetings, 204.
- passing special resolution is evidence that statement sufficient, 212.
- correction of statement, how made, 213.
- proof of debt admits notice of meeting, 214.
- resolution at first meeting, and registration, 204.
- duty of chairman, 205.
- Resolution by arrangement—*
 - passed at first meeting, 204.
 - trustee may be appointed at meeting, or at subsequent meeting by special resolution, 129.
 - security and remuneration of trustee, 205.
 - liquidation dates from the appointment of trustee, 131.
 - property devolving on trustee, 131.
 - powers of trustee, 132.
 - registrar to give certificate of appointment of, 211.
 - form of, 266.
 - removal of trustee, 213.
 - calling of meetings, 213.
 - creditors showing cause against resolution, 214.
 - proof to be made before dividend, 214.
 - trustee to give notice to creditors to come in and prove, 214.
 - form of notice, 268.
 - rejected claims excluded from dividend, 215.
 - what creditors entitled to dividend, 215.
 - provision as to debtor's discharge, 212.
 - form of resolution, 267.
 - form of report of trustee, 267.
 - form of discharge, 267.
- Resolution for composition—*
 - creditors may accept composition by extraordinary resolution, 135.
 - definition of extraordinary resolution, 135.
 - requisites of resolution for composition, 205.
 - creditors may direct composition to be secured, 206.
 - deed of composition may be provided for, 206.
 - resolution to be filed within three days, 206.
 - second meeting to be summoned to confirm, 206.
 - resolution at second meeting, 207.
 - filing resolution, proofs, &c., 207.
 - resolution to be examined and registered by registrar, 211.
 - composition binding on all creditors in debtor's statement, 138.
 - of debtor ignorant of holder of negotiable instrument, what particulars sufficient, 139.
 - provisions of composition may be enforced by court, 139.

LIST—

- of creditors to be given by insolvent and verified, 33, 173.
- form of, 233.
- of outstanding property to be furnished by trustee after close of insolvency, 181.
- of proofs to be sent in monthly by trustee, 169.
- form of list of creditors to be used at meetings, 231.
- of creditors to be furnished in liquidation or arrangement, 199.
- form of, 262.

LOCAL PAPER—

See ADVERTISEMENT.

MACHINERY—

validity of mortgages of, in certain cases, notwithstanding provision as to order or disposition, 46.

MAGISTRATE, POLICE—

may attest debtor's petitions, 18.

may take preliminary proofs, 48.

may give certificate of preliminary proof, 48.

may take affidavits in insolvency, 186.

proof of debt may be sworn before, 114.

is examining court when persons ordered to attend before him, 3.

in Brisbane or Bowen is not an examining court, 153.

can examine insolvent and others for discovery of property when ordered by court, 69.

has power to issue warrant, 70.

and to commit for refusal to answer satisfactorily, 71.

last examination may be held before any, 100.

except in Brisbane or Bowen, 153.

See JUSTICES OF THE PEACE.

MAJORITY OF CREDITORS—

debts not exceeding £10 do not count in number in estimating, 5.

for ordinary and special resolutions, 52.

for resolution in liquidation proceedings, 210.

MANAGER—

appointment of, 40, 160.

must submit his accounts to trustee, 176.

In liquidation—

appointment of, 200, 201.

cancellation of appointment, 201.

entitled to custody of books or effects, 202.

to permit access to books, 202.

when duties of, terminate, 211.

to account on conclusion of his duties, 211.

is subject to control of court, 212.

MANAGEMENT. *See* SCHEME OF SETTLEMENT.**MEETINGS—***First meeting—*

to be not earlier than six nor later than twenty days from adjudication, 43.

to be held at or near principal registry, 47.

registrar to preside at, 50.

provision as to holding elsewhere, 174.

notice of, to be given in *Gazette* and paper, 47, 174.

form of notice, 228.

creditors to make preliminary proof before voting at, 51.

no vote allowed for unliquidated or contingent debt, 51.

secured creditor to vote for balance, 51.

vote at, may be given by proxy, 51.

form of proof, 229, 230.

definition of "ordinary" and "special" resolution, 51, 52.

creditors may appoint trustee, 48.

creditors must declare security to be given by trustee if appointed, 49.

creditors may give directions as to the manner in which property is to be administered, 50.

may be adjourned, 53.

quorum at, 175.

if no quorum at adjournment, registrar to report to court, 175.

minutes of proceedings at, to be made and filed, 117.

Further meetings—

meeting for appointment of new trustee, if votes given improperly, 53.

MEETINGS—

Further meetings—Continued.

- trustee may summon, from time to time, 75.
- court may also summon, 75.
- member of committee may also summon, 77.
- provisions as to, generally, 77.
- summoned by trustee by notice, 175.
- for removal of trustee or member of committee, how summoned, 179.
- for consideration of application for certificate, 184.
- valid though notice of, not received by all creditors, 176.
- affidavit is evidence of sending notice of, 176.
- how summoned, when ordered by the court, 156.
- minutes of proceedings at, 117.
- quorum at, 175.
- costs of meeting summoned by any person other than trustee, 176.

Meetings in liquidation proceedings—

See LIQUIDATION BY ARRANGEMENT OR COMPOSITION.

MEMBER OF LEGISLATIVE ASSEMBLY—

insolvency of, 287.

MEMBER OF LEGISLATIVE COUNCIL—

the like, 289.

MEMBER OF PARTNERSHIP. *See* PARTNERS.

MERCANTILE ACT OF 1867—

protection to certain securities under, 46.

MESNE PROCESS—

insolvent entitled to discharge from, 39.

MINUTES—

of meetings to be kept and filed, 117.

MISDEMEANOR—

See OFFENCES.

MORTGAGES—

- validity of certain, not affected by provisions as to order or disposition, 46.
- trustee may mortgage property, 82.
- land subject to equitable mortgage may be ordered to be sold, 86.
- trustee may redeem pledges of deeds or goods payable at a future day, 86.
- mortgagee may bid at sale of mortgaged property, 87.
- accounts and sale of mortgaged property may be taken and ordered, 170.
- application of proceeds, 171.

MOTIONS—

- applications must be made on motion, 165.
- affidavit must be served four clear days, 165.
- order nisi, same time, 165.
- duplicate notice and sealed copy rule to be served, 165, 166.
- affidavits to be filed two days before hearing, 166.
- registrar to endorse time of filing on affidavits, 166.
- short note of motion to be given to registrar, 166.
- order of hearing motions, 166.
- for applications in particular cases. *See various headings throughout Index.*

MUNICIPAL RATES—

twelve months preferential, 90.

MUNICIPALITY—

insolvency of councillor or auditor, 292.

MUTUAL DEALINGS—

may be set off and balance claimed, 94.

NAME—

- definition of, 154.
- trustee's official name to be used in actions, 57.

NEGOTIABLE SECURITIES--

must be presented to trustee before payment of dividends, 182.

NEW TRUSTEE--

appointment of. *See* TRUSTEE.

NOTARY PUBLIC--

may take affidavits in insolvency in certain cases, 186.

NOTE OF MOTION--

to be given to registrar, and requisites of, 166.

NOTICE--

effect of, in reference to certain transactions, 62, 65.

of act of insolvency material in certain transactions, 67.

every, issued by court, to be sealed, 156.

to be posted unless otherwise provided, 157.

of motion. *See* MOTION.

of first and subsequent meetings. *See* MEETINGS.

of application for discharge of insolvent. *See* CERTIFICATE.

of rejection of proof. *See* PROOF OF DEBT.

of application for release of trustee. *See* TRUSTEE.

forms of, annexed to rules. *See* FORMS; title, NOTICE.

of various applications. *See various headings throughout Index.*

OATHS--

See AFFIDAVITS.

OBSTRUCTING OFFICERS--

an offence punishable summarily, 147.

OFFENCES--

Felony punishable with three years' imprisonment--

insolvent quitting or attempting to quit Queensland with property to the amount of £20, 145.

Misdemeanors punishable with three years' imprisonment--

insolvent not discovering property to trustee, 140.

insolvent not delivering property, 141.

insolvent not delivering books, papers, &c., 141.

insolvent concealing property to value of £10, 141.

insolvent removing property to same value, 141, 142.

insolvent making material omission in statement, 142.

insolvent failing to inform trustee of proof of false debt, 142.

insolvent preventing production of books, &c., 142.

insolvent concealing, destroying, or mutilating books, 142.

insolvent making false entries, 143.

insolvent parting with or altering documents, 143.

insolvent accounting by means of fictitious losses, 143.

insolvent obtaining credit by fraud within four months, 143.

insolvent obtaining credit on false pretence of carrying on business within same period, 144.

insolvent disposing of property otherwise than by way of trade within same period, 144.

insolvent fraudulently obtaining consent of creditors to agreement in reference to his affairs, 144.

insolvent omitting to keep proper books, 144.

any person receiving or concealing property with intent to defeat attachment, 146.

any person receiving property fraudulently from insolvent, 147.

Misdemeanors punishable with two years' imprisonment--

inserting advertisement without authority, 147.

inserting false advertisement, 147.

Misdemeanors punishable with one year's imprisonment--

insolvent obtaining credit under false pretences, 145.

insolvent making any fraudulent gift, &c., of property, 145.

OFFENCES—

Misdemeanors punishable with one year's imprisonment—Continued.

insolvent concealing or removing property after or two months before judgment or order, 145.

creditor making false claim or proof, 146.

Offences punishable summarily—

any person concealing part of insolvent's property, 146.

obstructing officer of court, 147.

Prosecution for offences—

insolvent may be committed summarily, 148.

prosecution at trustee's instance, or on application of creditor or member of committee, 148.

provision as to costs of prosecution, 149.

form of indictment, 149.

jurisdiction of district courts, 149.

provision as to punishments, 149.

OFFICE COPIES—

of proceedings to be provided by registrar, 156.

in case of transfer to district court, 9.

OFFICERS—

Obstructing. See OBSTRUCTING.

OFFICIAL ASSIGNEE—

abolition of office of, and disposal of records belonging to, 150.

OFFICIAL NAME --

of trustee, what is, and what he may do under, 57.

OFFICIAL TRUSTEE --

appointed by Governor in Council, 41.

to give security, 42.

amount of bond, 216

is official receiver, 42.

to pay into consolidated revenue five per cent. of sums collected, 42.

estate vests in, until election of creditors' trustee, 44.

to take possession of insolvent's property, and sell if perishable, 44.

to act if vacancy in office of creditors' trustee, 56.

accounts of, when acting as trustee, to be audited by accountant, 181.

ONEROUS PROPERTY—

may be disclaimed by trustee, 78-79.

remedies for persons affected, 79.

limitation of time for disclaiming, 79.

ORDER OR DISPOSITION --

goods and chattels in order or disposition of insolvent pass to creditors, with certain exceptions, 46.

ORDERS—

single judge may make, 6.

every court may rescind, alter, or vary its own, 8.

general power of court to make, 10.

general provision as to enforcement of, 12.

for costs. *See COSTS.*

for attachment of property. *See PROPERTY.*

on various applications. *See various headings throughout Index.*

forms of. *See FORMS.*

appeal from. *See APPEAL.*

to shew cause, practice as to, 165.

ORDINARY RESOLUTION—

definition of, 51.

OUTSTANDING PROPERTY—

list of, to be delivered by trustee applying for release, 124, 181.

PARTICULARS OF DEMAND—

to be lodged with debtor's summons, 158.

PARTNERSHIP—

majority of members may present petition for insolvency of, 18.

PARTNERS—

form of affidavit for debtor's summons against, 221.

petition against, on commission of act of insolvency by one or more, 33.

when petitioning creditors, one partner may sign and verify petition, 27.

one partner may act for firm when creditors, 115.

statement of affairs by insolvent partners, 174.

Joint and separate estates—

proof in respect of distinct contracts, 93.

property of partners to be vested in same trustee, 97.

joint creditors may prove debt for purpose of voting, 97.

proof by separate creditor against joint estate, 169.

dividends in case of, 98.

trustee may commence actions in name of insolvent and his partners, 98.

consolidation of proceedings against debtors, members of same partnership, 113.

procedure where several petitions against partnership, 163.

PAWNING PROPERTY—

See PLEDGES, OFFENCES.

PAY—

See PENSION.

PAYMENTS—

certain payments by or to insolvent protected, 67.

PENSION, CIVIL—

appropriation of part of, on application of trustee, 61.

certificate may be granted, subject to condition affecting, 109.

form of order, 248.

sealed copy order to be submitted to head of department, 191.

PERIODICAL PAYMENT—

proof in cases of, 92.

PERISHABLE PROPERTY—

official trustee may sell, 44.

PERJURY—

insolvent may be committed for, summarily, by court or examining court, 148.

punishment for false proof, 146.

PERSONAL SERVICE—

of notice of motion, how effected, 165.

provision when personal service of petition or debtor's summons cannot be effected, 167.

PETITION FOR ADJUDICATION (generally)—

may be presented at and filed in the principal or any district registry, 15.

if in latter, duplicate to be transmitted to principal registry, 15.

copy may be transmitted by telegraph, 16.

provisions as to sealing, and office copies, 156.

PETITION BY CREDITOR—

lies, if any act or acts of insolvency committed, 19.

for acts of insolvency. *See* ACTS OF INSOLVENCY

debt of single creditor to support, must be £50 at least, 23.

debt must be liquidated and subsisting when act committed, 23.

security must be valued, 23

form of, and short statements of acts of insolvency, 26, 27.

may be presented against partnership or any member, 33.

must be verified by oath, 27.

may be signed and verified by one partner, by officer of corporation or company, or by attorney or agent of creditor out of colony, 27, 28.

PETITION BY CREDITOR—Continued.

- to be served, and summons to be endorsed, 29.
- service may be personal or as prescribed, 29.
- if no appearance entered, debtor may be adjudicated, 29.
- copies of petitioner's affidavits may be transmitted by telegraph, 30.
- to be set down on appearance of debtor, 30.
- debtor may file affidavits and transmit copies by telegraph, 30.
- court, on necessary proof, can adjudicate, adjourn, or dismiss, 31.
- if debt contested, court may direct trial, 31.
- witnesses may be summoned to give evidence of acts of insolvency, 37.
- petitioning creditor to defray costs until adjudication order, 32.
- by several creditors not in partnership, requisites of affidavit for, 160.
- time for appearance to, same as writ of summons, 161.
- hearing of, when all respondents not served, 161.
- debtor disputing, to specify statements he objects to, 161.
- further evidence may be given on hearing, 161.
- if petitioner neglects to appear, cannot present fresh petition without leave, 162.
- adjudication on, may be made forthwith, if ground is declaration of insolvency, 162.
- if debt established after trial registrar to fix day for hearing, 162.
- if debt not established, day fixed for dismissal, 163.
- prosecution of claim when proceedings stayed on petition, 163.
- precedence in case of several, against debtor or firm, 163.
- to be served personally, and sealed copy delivered, 167.
- substituted service may be directed, 167.
- notice of filing may be ordered to be advertised, 167.
- service, how proved, 167.
- if debtor absent, may be left at residence, or other service ordered, 168.
- two or more petitions may be consolidated, 113.
- if petitioner not diligent, other creditor may be substituted, 113.
- provision as to dealing with security held by petitioning creditor, 179.

PETITION BY DEBTOR—

- presentation of, is an act of insolvency, 20.
- any person may petition for adjudication against himself, 17.
- form and attestation of, 18.
- in case of partnership, majority of members resident in colony must sign, 18.
- on presentation of, court proceeds to adjudicate, 18.
- lapses, if no adjudication after four weeks from filing in principal registry, 160.
- on presentation of petition, receiver to take possession of debtor's property, 42.

In liquidation by arrangement or composition. See LIQUIDATION.

PLEDGES—

- trustee may pledge insolvent's property, 82.
- may be redeemed by trustee, 86.
- by insolvent, when punishable, 144.

POLICE MAGISTRATE—

- when examining court, 3.
- in Brisbane or Bowen, cannot act under sections 114 and 165, 152.
- when he may examine insolvent and others for discovery of property, 69.
- has power to issue warrant, 69-70.
- and to commit for refusal to answer satisfactorily, 71.
- last examination of insolvent may be heard before him, 100.
- may give certificate of preliminary proof, 48.

See AFFIDAVITS, JUSTICES.

POST—

- letters by, may be ordered to be handed to trustee, 73.
- form of order, 255.
- notices may be sent by, 157.

POST—*Continued.*

- proceedings on transfer to district court may be sent by, 172.
- notice of meetings may be sent by, 175.
- dividend may be sent by, at the risk of creditor, 182.

POWERS—

- exercisable by insolvent pass to trustee, 46.

POWER OF ATTORNEY—

- debtor may be compelled to execute, 73.
- trustee may execute, 80.

PRACTICE—

- See* PROCEEDINGS, and various headings throughout Index.

PREFERENCE (FRAUDULENT)—

- is an act of insolvency, 22.
- avoided as against trustee, 64.
- instances of, 64, 65.

PREFERENTIAL DEBTS—

- local rates due within twelve months of adjudication, 90.
- rates and assessments not exceeding one year, 90.
- wages or salary of clerk or servant, not exceeding £50 in respect of three months' service before adjudication, 91.
- rent not exceeding three months, 92.

PREFERENTIAL PAYMENTS—

- provisions avoiding, 64.

PRELIMINARY PROOF OF DEBT—

- must be made by creditor before voting at first meeting, 47, 51.
- certificate of, to be given and filed, 48.

"PRESCRIBED"

- means prescribed by rules of court, 3.

PRESSURE—

- by creditor, no excuse for preference, 64.

PRINCIPAL AND DISTRICT RECEIVERS—

- See* RECEIVER.

PRINCIPAL AND DISTRICT REGISTRARS—

- See* REGISTRAR.

"PRINCIPAL REGISTRAR"—

- means the registrar of the Supreme Court and "Registry," his office, 3.

PRINCIPAL AND DISTRICT REGISTRIES—

- See* Registry.

PRIORITIES—

- court may decide questions of, 10.

PRIORITY—

- debts payable in priority. *See* PREFERENTIAL DEBTS.

PRIVATE CONTRACT—

- trustee may sell by, 81.

PROCEEDINGS—

- general rules to be made for regulating, 13.
- may be in forms in schedule to rules, or as near as possible, 155.
- to remain of record and not be subject to removal, 155.
- to be open for inspection, 155.
- all process to be sealed, 156.
- office copies of, to be furnished by registrar, 156.
- part of *Gazette* may be attached to proceedings, 156.
- notices may be sent through post where no other mode of delivery prescribed, 157.
- on debtor's summons. *See* DEBTOR'S SUMMONS.
- on creditor's petition. *See* ADJUDICATION, PETITION.
- in liquidation and composition. *See* LIQUIDATION.
- on motions and practice. *See* MOTIONS.

PROCEEDINGS—*Continued.*

- on transfer of proceedings. *See* TRANSFER OF PROCEEDINGS.
- staying, on appeal, 9.
- staying, pending negotiations for liquidation or composition, 115.
- formal defects or irregularities do not invalidate, 117.
- to prove debt. *See* PROOF OF DEBT.

PROMISSORY NOTES

- must be exhibited to trustee before payment of dividend, 182.

PROOF OF DEBTS (generally) —

- unliquidated damages not provable, 87.
- debts or liabilities contracted after notice of act of insolvency not provable, 87.
- what debts and liabilities provable generally, 87.
- estimate of value of contingent debts or liabilities to be made by trustee, 88.
- appeal against valuation, 88.
- in cases of rent and periodical payments, 92.
- set off of mutual credits, debts, or dealings to be allowed, 93.
- at what rate rebate to be calculated in case of debts not due, 170.

Partnership—

- joint creditors may prove against one partner's estate for purpose of voting, 97.
- in case of joint and separate estates, how made, 93, 169.

Preferential—

- (1) local rates due within twelve months, 90.
- (2) rates and assessments not exceeding one year, 90.
- (3) clerk's, servant's, or workman's wages, not exceeding £50, incurred within three months, 91.
- (4) rent not exceeding three months, 92.

Secured creditor—

- may prove for whole debt upon giving up security, 94.
- entitled to a dividend in respect of his balance after valuing his security, 94.
- must give up his security on payment of his debt, 94.
- can only vote for balance after deducting value of security, 51.
- may amend valuation of his security, 95.
- rebate of interest on debts payable *in futuro*, 89.

Practitioner—

- form of proof, 229.
- preliminary, must be made before voting at first meeting, 47.
- may be sworn before justice, commissioner, or registrar, 114.
- proof may be made by agent or employee, 168.
- corporation may prove by agent duly authorised, 114.
- form of, by agent, 230.
- creditor to bear costs of making, 181.
- creditor may prove at any meeting, or before meeting by sending affidavit through post to trustee, 168.
- debts proved before and decided on by trustee, 80, 87.
- notice of decision to be given to creditor, 169.
- appeal from trustee's decision, 75, 169.
- proofs to be filed by trustee within seven days after allowance or disallowance, 179.
- trustee may fix a day for expunging or reducing proof after admission, 169.

In liquidation. See LIQUIDATION AND ARRANGEMENT.

PROPERTY (generally) —

- definition of what it means and includes, 3.
- vests in official trustee, until election of creditors' trustee, 44.
- is divisible in proportion to the debts proved, 44.
- does not include trust property, 45.
- nor tools of trade, apparel, &c., not exceeding £20, 45.

PROPERTY (generally)—Continued.

- comprises, (1) property vested in insolvent at and during insolvency, 45.
- (2) the capacity to exercise powers, 46.
- (3) and, with certain exceptions, goods and chattels in the possession of insolvent, 46.
- of insolvent passes to creditors' trustee on appointment, 53.
- and to succeeding trustees without conveyance, 57.
- certificate of appointment of trustee operates as a conveyance of, 57.
- discovery of, and examination of insolvent, his wife, and witnesses in respect thereto, 69.
- attachment and seizure of, may be directed, 69.
- and search warrant may be granted, 70, 71.
- reward to person giving information leading to discovery of, 72.
- outstanding at close of insolvency, list of, to be delivered to official trustee, 181.

Administration of—

- conduct of insolvent in reference thereto, 73.
- trustee to obey creditors' directions as to, 74.
- and call meetings of committee of inspection and of creditors from time to time, 75.
- subject to creditors' directions trustee has discretion to manage, 75.
- trustee constituted receiver of, 76.
- trustee may apply for opinion, advice, or direction of court in administering, 76.

Dealings with—

- stock, shares in ships, &c., become vested in trustee, 77.
- things in action may be sued for in official name, 77, 78.
- trustee to take possession of insolvent's deeds, books, and property at once, 44, 78.
- onerous property may be disclaimed by trustee and provision as to disclaimer, 78, 79, 80.
- property of partners to be vested in same trustee, 97.

Discovery of—

- court may order insolvent's wife or witnesses to be summoned for examination, 69.
- and may issue warrant for attendance, 70.
- insolvent to answer questions, though criminating, 70.
- examining court may examine orally or by written interrogatories, 71.
- court may order payment of amount due to estate admitted by witness, 71.
- requisites of application to court for, and must be verified if not made by trustee, 189.

Offences in reference to—

- insolvent failing to discover, 140.
- insolvent failing to deliver, 141.
- insolvent concealing to the value of £10, 141, 145.
- insolvent removing to like value, 141-142.
- insolvent obtaining on credit, 144.
- insolvent disposing of, otherwise than by way of trade, 144.
- insolvent absconding with, to value of £20, 145.
- insolvent making fraudulent gift of, 145.
- other persons concealing or not discovering, 146.
- other persons concealing after attachment, 146.
- receiving with intent to defraud, 147.

Mortgaged—

- may be ordered to be sold, 170-171.
- application of proceeds, 171.

Prosecution of insolvent—

- insolvent may be committed summarily by court or examining court for offences against Act or for perjury, 148.

PROPERTY (generally) —

Prosecution of insolvent — Continued.

may be ordered on motion of trustee, creditor, or member of committee of inspection, 148.

provision as to cost of, 149.

PROTECTED TRANSACTIONS —

bond fide dealings by a trustee under assignment, 62.

executions levied and paid over without notice, 62.

executions or attachments executed by seizure and sale without notice, 69.

bond fide payments to insolvent before adjudication, 67.

payment or delivery by depositary before adjudication, 67.

bond fide contracts or dealing before adjudication, 67.

bond fide dispositions, contracts, conveyances, &c., without notice of act of insolvency, 68.

PROXY —

votes at first meeting may be given by, 51.

filing and transmission of, 52.

not to be by way of sale of debt, 115.

requisites of, 173.

must be produced at meeting and filed, 173.

form of, 230.

PUNISHMENT —

See OFFENCES.

QUESTIONS OF FACT —

may be tried before a jury, or by the court itself, 11.

QUORUM —

what constitutes at meetings, 175.

adjournment in default of, 175.

of committee of inspection, when not fixed by creditors, 182.

See MEETINGS.

RATES, LOCAL —

twelve months' preferential, 90.

REAL ESTATE —

if out of Queensland, insolvent may be ordered to convey, 66.

burdened with onerous covenants may be disclaimed, 78.

REBATE —

of interest to be made on debts payable *in futuro*, 89.

at what rate to be calculated, 170.

RECEIVER —

Principal —

the official trustee to be appointed as, 42.

District —

to be appointed in every place where there is a district registrar, 42.

principal or district to take possession of debtor's property after presentation of his petition, 43.

or manager of debtor's property or business may be appointed after presentation of petition, 40.

trustee in reference to estate is in same position as a receiver in equity, 76.

must submit his accounts to trustee for examination, 176.

practice as to appointment of, 160.

In liquidation — See LIQUIDATION BY ARRANGEMENT.

RECEIVING —

or removing property with intent to defeat attachment, 146.

property from insolvent with intent to defraud, 147.

RECORD —

proceedings of the court to remain of, 155.

for trial by jury and amendment of, 193.

RECORDS—

disposal of, belonging to official assignees, 150.

“THE RECORD”—

to be kept by trustee, and contents of, 196.

to be submitted for inspection of committee, 196.

REDUCING PROOFS—

See PROOFS and TRUSTEE.

REFERENCE TO ARBITRATION—

power of trustee to submit to, 82.

“REGISTERS OF INSOLVENCIES”—

to be kept by accountant, 195.

entries of *Gazette* notices in, 195.

open for searches, 195.

REGISTRAR—

“registrar” means any registrar under Act, 3.

“principal,” definition of, 3.

“district,” definition of, 3.

must transmit contents of documents by telegraph, if required, 16.

to summon general meeting, 47, 174.

may take preliminary proof, 47, 48.

to preside at general meeting, 50.

to preside at meetings ordered by the court, 77. *See* MEETINGS.

to make and enter minutes, &c., 117.

to transmit and seal copy orders for meetings summoned by court, 156.

certain office copies to be provided by, 156.

to file advertisements, 157.

to keep insolvency book and debtors’ summons book, 195.

to make extracts for accountant’s use, 196.

registrars to make returns to accountant in insolvency, 124.

travelling and incidental expenses of, how provided for, 120.

REGISTRATION—

of certificate of appointment of trustee. *See* TRUSTEE.

of resolutions for liquidation or composition. *See* LIQUIDATION.

REGISTRY, “PRINCIPAL” AND “DISTRICT”—

definition of, 3.

RELEASE—

on creditors giving, adjudication may be annulled, 99.

of trustee, practice for obtaining, 180.

REMAINING OUT OF COLONY—

an act of insolvency, 19.

REMOVAL OF TRUSTEE—

by court or creditors. *See* TRUSTEE.

remuneration in case of, 180.

REMUNERATION OF TRUSTEE—

is fixed by creditors, 48.

RENT—

distress for, to be stayed after adjudication or filing debtor’s petition, 92.

landlord entitled to three months’ rent in priority, 92.

proof for, 92.

REPEAL—

of Act of 1864, and effect of, 5.

REPRESENTATION, FALSE.

See OFFENCES.

REPUTED OWNERSHIP—

of goods in possession, order, or disposition of insolvent, 46.

RESIGNATION—

of trustee. *See* TRUSTEE.

remuneration in case of, 180.

RESOLUTIONS—

- special, definition of, 52.
- extraordinary, definition of, 135.
- ordinary, definition of, 51.
- registering. *See* LIQUIDATION.
- at meetings to be forwarded by trustee to registrar, 169.
- in liquidation. *See* LIQUIDATION.

RESTRAINING ACTIONS OR PROCEEDINGS—

- against insolvent after presentation of petition, 40.
- against debtor in liquidation before resolution, 200.
- after resolution, 209.

REVIEW—

- power of court to, 8.

REWARD—

- to be given for procuring discovery of concealed property, 72.

RULES OF COURT—

- may be made from time to time by Supreme Court, 13.
- matters to be provided for therein, 13.
- powers of court in absence of, 216.
- of 1st October, 1874, 154.
- of 5th September, 1876, 277.
- of 17th August, 1877, 278.
- of 29th August, 1878, 279.
- of 12th December, 1879, 280.

SALARY—

- appropriation of part of, may be ordered by court, 61.
- notice of application as to, to be given to insolvent, 191.
- order may be rescinded or varied, 191.
- form of order, 249.
- certificate may be granted subject to condition affecting, 109.
- of clerk or servant, how far preferential, 91.

SATISFACTION—

- how entered on orders, 194-195.

SCALE—

- of costs, 271.
- of fees, 275.

SCHEME OF SETTLEMENT OR MANAGEMENT—

- may be accepted by trustee with sanction of special resolution of creditors, 83.
- court may annul adjudication, 84.
- provisions of may be enforced by court, 84.

SEAL—

- every district court and every district registry to have, 119.
- sealed copies are evidence, 118.

"SEALED"—

- definition of, in construction of rules, 154.

SEARCH WARRANTS—

- See* PROPERTY.

SECRETING PROPERTY—

- See* OFFENCES.

"SECURED CREDITOR"—

- meaning and definition of, 4.
- petition by, 23.
- rights of, not affected by adjudication, 39.
- may prove for whole debt upon giving up his security, 94.
- entitled to a dividend in respect of balance after valuing his security, 94.
- must give up his security on payment of his debt, 94.
- may correct his valuation of security, 95.
- must state particulars of security before voting or proving, 51, 176.

"SECURED CREDITOR"—Continued.

- must pay to trustee amount realised above assessed value, 176.
- proof of, not to be increased if security realises less than assessed value, 176.
- accounts and sale may be ordered in case of, 170.
- provision as to security held by petitioning creditor, 179.

SECURITY—

- on appeal. *See* APPEAL.
- on staying proceedings. *See* STAYING PROCEEDINGS.
- official trustee to give, for performance of his duties generally, 42.
- but need not where acting temporarily, 181.
- creditors' trustee may be required to give, 49.
- when ordered to be given, to be by bond, 187.
- provision as to penalty, 187.
- deposit may be made in lieu of, 187.
- of guarantee society may be given, 187.
- notice of sureties to be given, 187.

SEIZURE AND SALE OF GOODS—

- in what cases sheriff to hold proceeds of, 60.
- how far proceeds protected against creditors, 62.

SEIZURE OF PROPERTY—

- court may order. *See* PROPERTY.

SEPARATE CREDITORS—

- See* PARTNERS, PROOF OF DEBTS.

SERVANT—

- wages of, how far preferential, 91.

SERVICE—

- See* DEBTOR'S SUMMONS, PETITION FOR ADJUDICATION, SUBPENA.
- of notices and proceedings when no particular mode prescribed, 157.

SET OFF—

- of mutual credits, debts, or dealings allowed on proof, 94.

SETTING ASIDE PAY—

- See* PENSION.

SETTLEMENT, VOLUNTARY—

- how far same may be avoided by trustee, 63.
- "settlement" includes conveyance or transfer of property, 63.

SHARES—

- in ships and stock vest in trustee, 77.
- unmarketable, may be disclaimed by trustee, 78, 79.

SHEEP—

- See* MORTGAGES.

SHERIFF—

- duty of, in reference to proceeds of execution, 60.

SHORTHAND WRITER—

- may be employed by trustee, 83.
- court may direct evidence to be taken by, 119.
- scale of remuneration of, 194.

SOLICITORS—

- trustee may employ, 85.
- if trustees, may contract for remuneration, 85.
- motions by bar take precedence of, 166.
- costs of, when employed in estate, how allowed, 178.
- scale of fees of, 271.

SPECIAL CASE—

- may be stated, 10.

SPECIAL RESOLUTION—

- definition of, 52.

STAMP DUTY—

- deeds and documents affecting insolvent estates, how far exempt from, 121.

STAMP DUTY—Continued.

fees to be collected by means of stamps, 216.

STATEMENT—

trustee may apply to court on, for opinion or direction, 76.

STATEMENT OF AFFAIRS—

to be delivered by debtor, 73.

to be verified on oath, and in form in schedule, 173.

form of, 232.

requisites of, by partners, 174.

insolvent making material omission in, guilty of misdemeanor, 142.

In liquidation—

debtor to produce at meeting, and requisites of, 204.

to be registered, 211.

to be deemed accurate after passing of special resolution in liquidation, 212.

correction of, how made, 213.

STAYING PROCEEDINGS—

on appeal, 9.

on debtor's summons. *See* DEBTOR'S SUMMONS.

on creditors' petition. *See* PETITION.

pending negotiations for liquidation by arrangement or acceptance of composition, 115.

STOCK—

See SHARES.

SUBPENNA—

for attendance of witnesses to be issued by registrar, and may be in blank, 188.

sealed copy to be served personally, and reasonable sum to be tendered for expenses, 188.

service of, to be proved by affidavit, 189.

form of, 247.

SUBSTITUTED SERVICE—

See DEBTOR'S SUMMONS, CREDITORS' PETITION.

SUMMONS, DEBTOR'S—

See DEBTOR'S SUMMONS.

SUMMONSES—

to be sealed, 156.

SURETIES—

See BOND—

for trustee, need not justify, if nominated by meeting, 177.

SURPLUS—

how to be paid to insolvent, 183.

STATUTES—

Common Law Practice Act of 1867, 285.

Constitution Act of 1867, 289.

Defamation Act, 281.

Divisional Boards Act of 1879, 294.

Electric Telegraph Messages Act of 1872, 289-291.

Equity Act of 1867, 286.

Gold Fields Act of 1874, 292.

Joinder and Revivor Act, 285.

Legislative Assembly Act of 1867, 287.

Licensing Act of 1885, 294.

Life Insurance Act of 1879, 293.

Local Government Act of 1878, 292.

Mercantile Act of 1867, 287, 288.

Real Property Act of 1861, 284.

Real Property Act of 1877, 292.

Shipping Act (colonial), 281.

Supreme Court Act of 1874, 291.

STATUTES—*Continued.**Unclaimed Balances Act, 282-284.*

TAXATION OF COSTS—

to be by registrar, 193.

TAXES—

proof for, and how far preferential, 90.

“TELEGRAPH,” AND “TELEGRAPH STATION”—

definition of, 4.

TELEGRAPH MESSAGES ACT OF 1872—

provisions of, apply to insolvency proceedings, 16.

sections of, 289-291.

registrar to certify and seal copy document, 216.

petition may be transmitted from district registry under, 16.

other documents, the like, 16.

and affidavits, 41.

and certificate of proof, 48.

TENANCY IN TAIL—

trustee may deal with, 81.

THINGS IN ACTION—

what pass to trustees, 46.

assignee of, may sue or defend in his own name, 120.

TIME—

when not specially provided may be fixed by court, 216.

TITLE—

of Act, 2.

TOOLS—

to what extent they pass to trustee, 45.

TORT—

certain actions of, may be continued by insolvent, 46.

TRADE—

trustee may carry on insolvent's business, 80.

insolvent may be employed to carry on business, 82.

tools of. *See* TOOLS.

TRANSFER OF PROCEEDINGS—

may be directed to district court, 9.

seven days' notice to be given, 172.

registrar to send proceedings by book post, 172.

judge of district court may transfer to another district, 114.

form of transfer, 236.

in cases of liquidation, 209.

TRANSFER OF PROPERTY—

fraudulent, is an act of insolvency, 19.

what deemed fraudulent, as against trustee, 63, 64, 65.

insolvent may be compelled to execute, where property out of Queensland, 66.

fraudulent, is a misdemeanor, 145.

TRAVELLING EXPENSES—

of registrar, how provided for, 120.

of witness to be tendered, 188.

TRIAL—

questions of fact may be tried, 11.

in case of debt, subject of debtor's summons, 25.

in case of debt, subject of petition, 31.

rules of practice as to, 162.

TRUST—

certificate no discharge from debt or liability arising from breach of, 110.

TRUST PROPERTY—

does not pass to trustee in insolvency, 45.

TRUSTEE (ORDINARY)—

when he becomes insolvent may be removed from his trust, 127.

TRUSTEE (CREDITORS')—*Appointment of—*

until appointed, official trustee is trustee, and holds property, disposing of what is perishable, 44.

is elected at first meeting, 48.

appointment may be delegated to committee of inspection, 49.

must be resident in Queensland, 48.

need not be a creditor, 48.

more than one may be appointed, 55.

remuneration of, and security to be given by, 48, 49.

if no remuneration voted, registrar to allow, 177.

if no security required, trustee personally responsible to extent of estate, 177.

sureties for, need not justify if nominated by meeting, 177.

as to practice regulating security, 187, 188.

form of bond by, 235.

appointment of trustee to be reported to the court, 52.

certificate of appointment to be given by court, 177.

certificate is conclusive evidence of appointment, 52.

notice of appointment to be gazetted and published, and copy sent to creditors, 178.

no part of expense for competing for office of, payable out of estate, 181.

no defect or irregularity in appointment vitiates *bond file* acts, 59.

omission to pass resolutions under sub-section 2 or 3 of section 92 does not invalidate appointment, 177.

Vacancy in office—

during vacancy, official trustee acts as trustee, 56.

trustee may be suspended or removed for cause by court, 56.

court may at any time order meeting for election of new trustee, 54.

trustee may be removed by special resolution of creditors and another appointed, 56.

meeting for removal of, how summoned, 179.

New trustee—

may be elected if proofs expunged or reduced to a certain extent, 53.

vacancy by death, resignation, insolvency, non-residence, &c., to be filled up by creditors in general meeting, 55, 57.

trustee resigning or removed to render accounts in four days, 181.

remuneration of, in case of resignation, death, or removal, 180.

Position and powers of, in reference to estate and its administration—

on trustee's appointment, property vests in him, 53.

general definition of property, 45, 46.

stocks, shares in ships, and other shares vest in him, 77.

and things in action, 77.

can deal with property in which insolvent is tenant in tail, 81.

conveyances, &c., and dealings with property which are acts of insolvency, are void against him, 62.

and voluntary settlements and covenants for future settlement in certain cases are also void, 63.

and conveyances and dealings amounting to fraudulent preferences, 64, 65.

is entitled to proceeds of execution, amounting to £50, after fourteen days from sale, 60.

property out of Queensland may be ordered to be conveyed to, 66.

takes possession at once of deeds, books, documents, and property capable of manual delivery, 78.

is in same position as a receiver in equity, 76.

subject to direction of creditors, has full discretion in management of estate, 75.

TRUSTEE (CREDITORS')—

Position and powers of, in reference to estate and administration—Continued.

- may disclaim onerous covenants, unmarketable shares, and unprofitable contracts, 78.
 - provisions as to disclaimer, 79.
 - may retain leasehold premises for not more than three months, and not later than end of lease, 80.
 - may apply to court for advice and direction, 76.
 - practice on such application, 178.
 - may apply for order for examination of insolvent, his wife, or any person for discovery of property or dealings, 69.
 - provisions as to enforcement of attendance of witnesses and attachment of property, 70, 71.
 - may apply for order for payment of debt appearing due on examination, 71.
 - may examine insolvent from time to time, 73.
 - may require him to aid in realisation and distribution of estate and to execute powers of attorney, &c., 73.
 - is empowered to receive and decide on proof of debts, 80.
 - may carry on business of insolvent, 80.
 - may exercise any powers and execute any deeds, 80.
 - may sell estate by public auction or private contract, 81.
 - his receipts sufficient, 81.
 - may prove and draw dividends in the insolvency of any debtor, 81.
 - may redeem deeds or personal estate under deposit or pledge, 86.
 - may make refund of part of premium on indenture of apprenticeship or articles of clerkship, 91.
 - may transfer indenture or articles, 92.
 - may apply for appropriation of pension, salary, or income, 61.
 - may employ a solicitor, 85.
 - if a solicitor, may contract for a percentage, 85.
- With sanction of committee of inspection—*
- may mortgage estate, 82.
 - may appoint insolvent to superintend the management, 82.
 - may bring or defend actions, 82.
 - may refer disputes to arbitration, 82.
 - may compromise with creditors and others, 83.
 - may divide property amongst creditors in existing form, 83.
 - may employ shorthand-writer, 83.
 - may make allowance to insolvent, 93.
 - may require creditor to give up security on payment of his debt, 94.
 - may apply to court for sanction to act where no committee of inspection, 59.
 - may obtain sanction of court or special resolution of creditors to doing acts without consent of committee, 59.
 - may, with sanction of special resolution, accept composition or assent to any general scheme of management, 83.

Duties of—

- must have regard to directions of creditors in administering or distributing estate, 74.
- must summon general meetings from time to time, 75.
- must send resolutions to registrar, 169.
- must call a meeting of committee of inspection every two months, 75.
- must keep proper books, 78.
- must transmit statement of accounts to accountant, 122.
- must keep "record" and "estate book," 196.
- must make report before close of insolvency, 101.
- his accounts must be audited by committee of inspection, 75.
- certificate of audit to be forwarded to accountant, 197.
- if resigning or removed to render accounts in four days, 181.

TRUSTEE (CREDITORS')—

Duties of—Continued.

- to make annual returns to accountant, 197.
- must make estimate of value of contingent debts or liabilities, 88.
- must pay moneys into bank, 85.
- liable to pay interest on moneys retained, 86.
- and to removal, 86.
- if no bank appointed for trust funds, court or committee to name, 177.

Duties and powers, in reference to proof of debt and dividends—

- debts to be proved before trustee, 80, 87.
- may take affidavits in cases of proof, 186.
- must give notice of decision on proof to creditor, 169.
- may reject or admit proof in whole or in part, 169.
- may expunge or reduce proof on application, 90.
- may expunge or reduce proof after admission, 169.
- may allow same interest as a jury, 93.
- must file proof after allowance or disallowance within seven days, 179.
- appeal from decision of, 75. *See also* APPEAL.
- must send list of claims to registrar monthly, 169.
- must declare dividends when determined by committee, 95.
- and give notice of intention to declare, 182.
- and gazette and advertise, 96, 182.
- must make provision for creditors at a distance, 95.
- must declare final dividend when estate realised, 96.
- may be ordered to pay dividends, 97.
- provision as to indemnity of, in certain matters, 54.

Release of—

- provisions as to obtaining, 124, 125.
- effect of order, 126.
- to account for unpaid dividends and outstanding property, 126.
- practice as to, 180.

TRUSTEE IN LIQUIDATION—

- debtor's property vests in, as in trustee in insolvency, 131.
- has same powers as trustee in insolvency, 132.
- provisions of Act as to release and audit apply to, 133.
- appointed at second meeting if not appointed at first, 205.
- certificate of appointment to be given, 211.
- form of, 266.
- creditors may prescribe bank for, 133.
- and security and remuneration, 205.
- may be released by special resolution, 133.
- must report debtor's discharge to registrar, 133.
- removal of, and vacancy by death, 213.
- to give notice to creditors to come in and prove, 215.
- form of notice, 268.
- rejection of claims by, 215.
- what creditors entitled to dividends, 215.

TRUSTEE (OFFICIAL)—

See OFFICIAL TRUSTEE.

UNCLAIMED DIVIDENDS—

- to be accounted for and paid over as directed by rules, 126.
- after five years become vested in crown, 127.

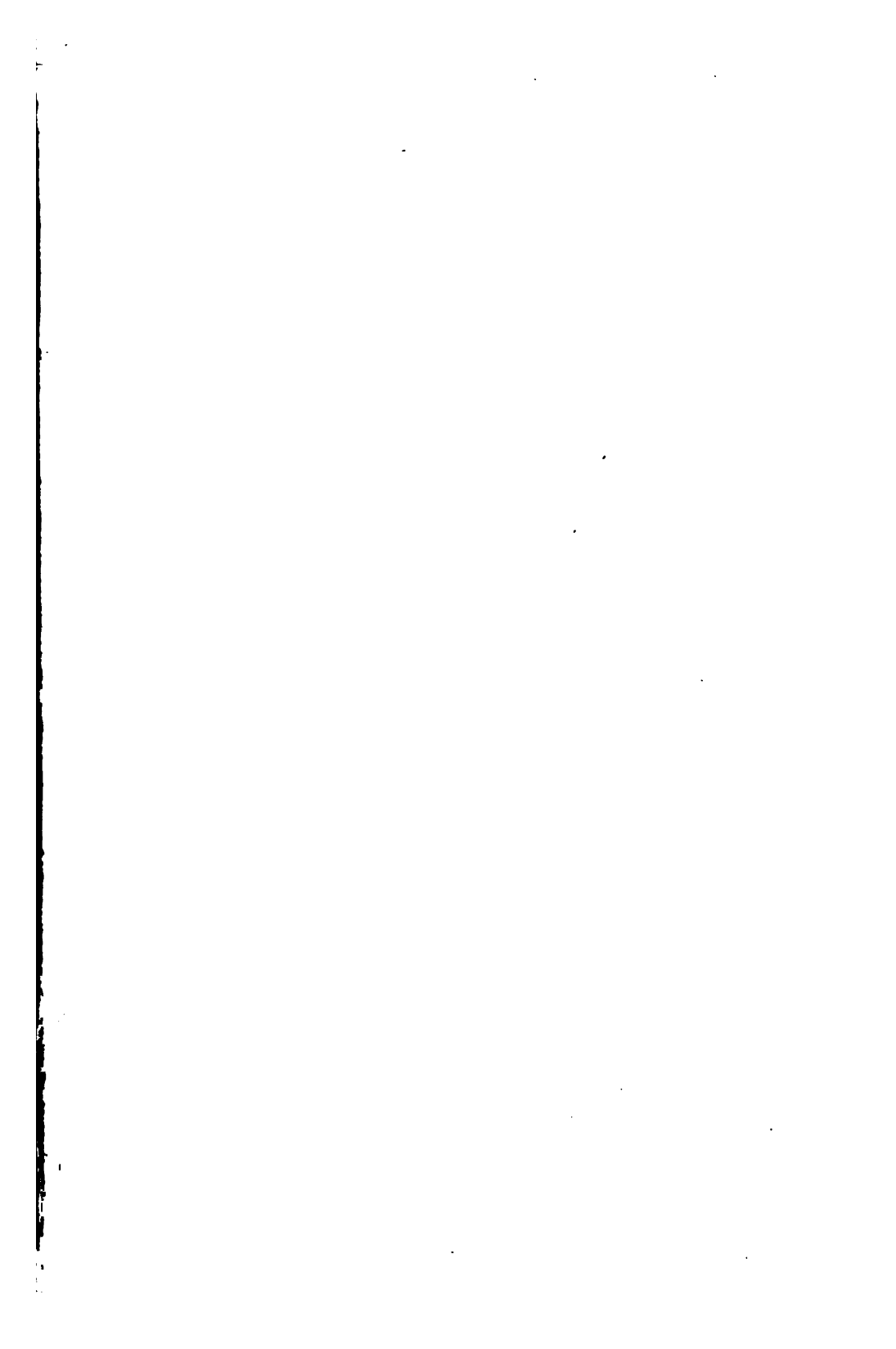
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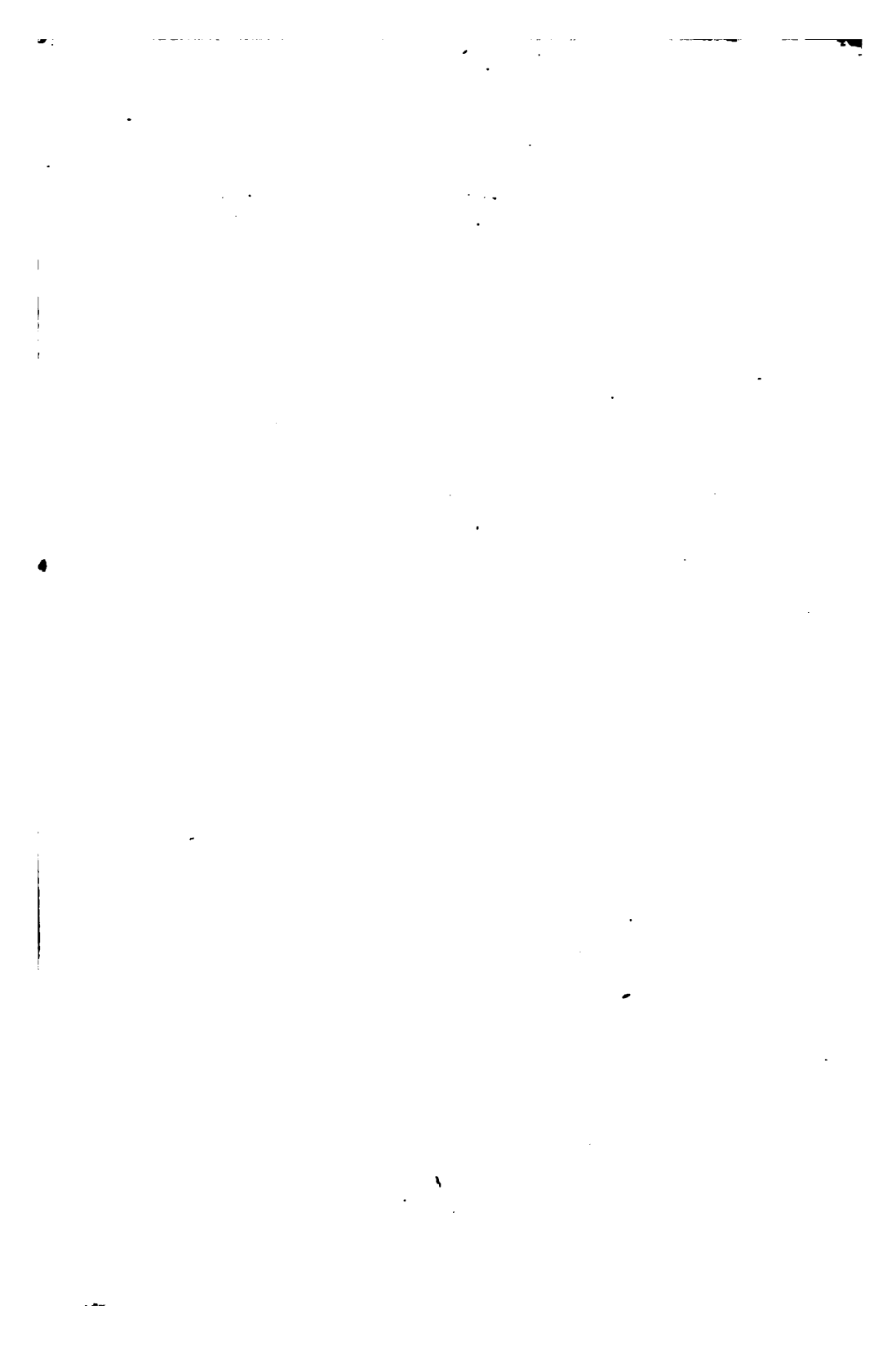
- moneys standing to credit of, to be paid into consolidated revenue after two years, 151.

UNDISCHARGED INSOLVENT—

- enforcement of claims against, 112.
- requisites of application to enforce payment of balance of debt against, 192.

- UNDISCHARGED INSOLVENT—*Continued.*
 hearing of, and adjournment, 192.
- UNLIQUIDATED DEMANDS—
 creditor cannot petition for, 23.
 arising otherwise than by contract or promise not provable, 87.
- UNPROFITABLE CONTRACTS—
 trustee may disclaim, 78.
- VACANCY—
 in office of trustee to be filled up by creditors in general meeting, 55.
- VALUATION—
 of contingent debt or liability may be made by trustee, 88.
 appeal against, 88.
- VICE-CONSUL—
 may take affidavits in insolvency in any place out of British dominions, 186.
- VOLUNTARY SETTLEMENT—
 how far same may be avoided by trustee, 63.
- VOTING—
 may be by proxy. *See* PROXY. *See also* ORDINARY RESOLUTION, SPECIAL RESOLUTION, EXTRAORDINARY RESOLUTION.
 joint creditor may vote in estate of single partner, 97.
- WAGES—
 (or income), certificate may be granted subject to condition affecting, 109.
 (or salary), of clerk, servant, &c., if not exceeding three months and not over £50, preferential, 91.
- WARRANTS—
 and orders to be sealed, 156.
 how addressed, 190.
 how executed as regards debtor, goods, &c., 190.
 applications for committal for contempt to be supported by affidavit, 190.
 mode of hearing application, 191.
 courts auxiliary to each other in executing, 12.
- WARRANT OF ATTORNEY—
 giving (by debtor) if fraudulent, an act of insolvency, 21.
- WEARING APPAREL AND BEDDING—
 to what extent they do not form part of divisible property, 45.
- WIFE—
 settlement on, by insolvent, when void as against trustee, 63.
 may be examined to discover estate, trade, or dealings of insolvent, 69.
 death of, when witness, does not invalidate testimony, 119.
- WITNESSES—
 to attend on subpoena, 188.
 number to be allowed may be limited by court, 189.
 allowances to be as per schedule, 189.
 costs of, are in discretion of court, 189.
 to sign depositions, 194.
 death of, does not invalidate evidence, 119.
- WOOL—
See LIENS.
- WORKMEN—
 wages of, how far preferential. *See* WAGES.
- WRITINGS—
See BOOKS.
- WRITS OF EXECUTION—
 requisites of, 194.
 common-law rules to apply to, 194.
 entry of satisfaction, how made, 194, 195.





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